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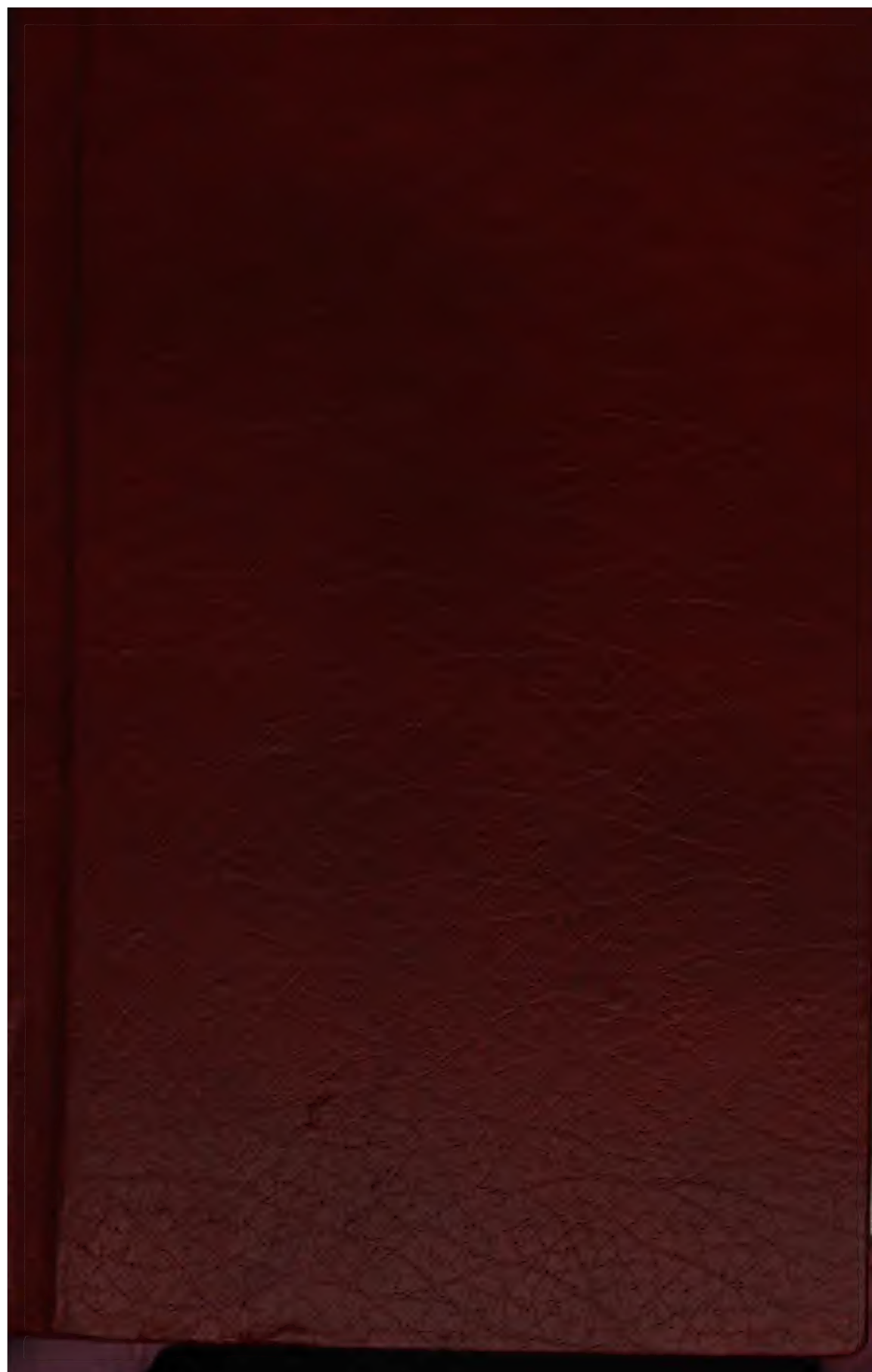
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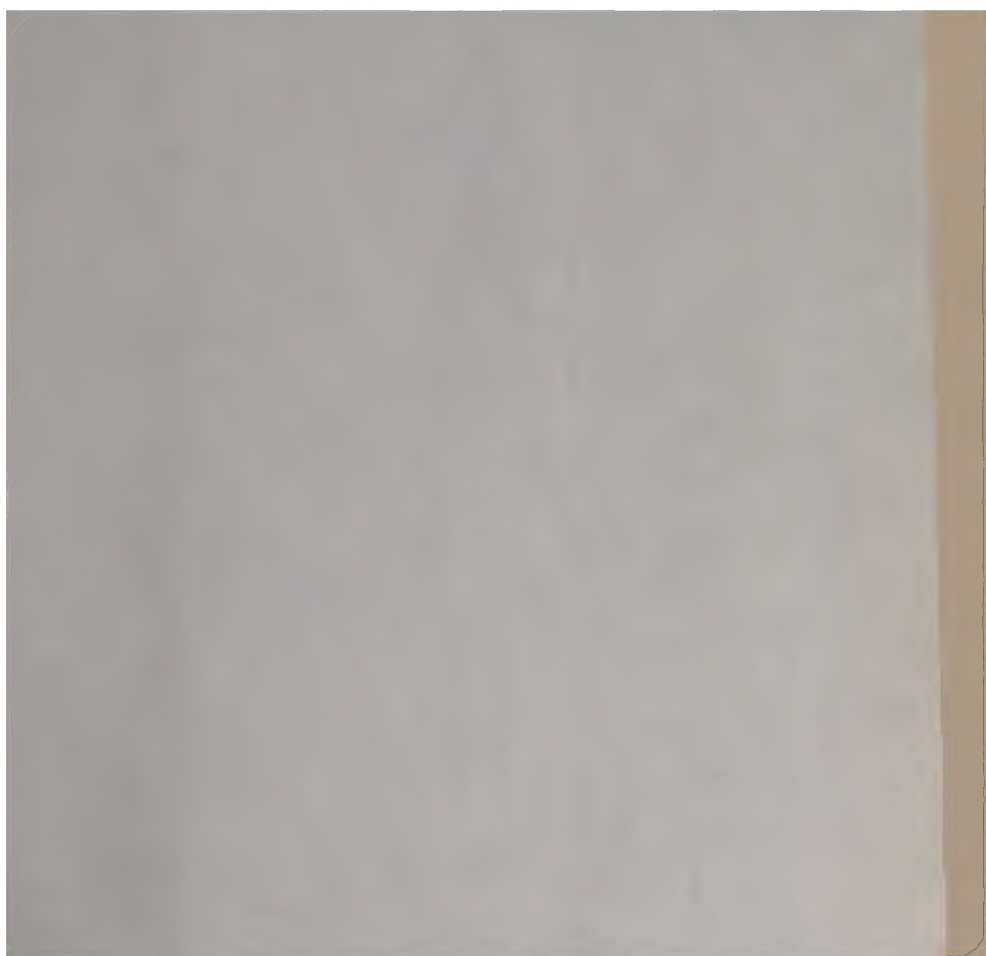
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POLITICAL SCIENCE QUARTERLY

EDITED BY THE FACULTY OF POLITICAL SCIENCE
OF COLUMBIA UNIVERSITY

Volume XIX]

MARCH, 1904

[Number 1

Germany, Great Britain and the United States, J. W. BURGESS
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Reviews: *Hoar's Autobiography of Seventy Years* — *Bart's Actual Government*
under American Conditions — *Dewey's Financial History of the United States*
— *Mitchell's History of the Greenbacks* — *Johnson's American Railway*
Transportation — *Meyer's Railway Legislation in the United States* — *Mont-*
ague's Standard Oil Company — *Morley's Life of Gladstone* — *Ashley's*
Tariff Problem — *Sidney and Beatrice Webb's History of Liquor Licensing*
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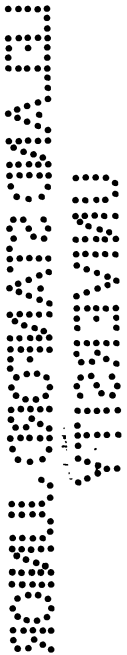
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POLITICAL SCIENCE QUARTERLY.

GERMANY, GREAT BRITAIN AND THE UNITED STATES.

IN the summer of 1902 the writer of these lines made a journey to Charlottenburg, to see one of his old and most respected and beloved teachers — Professor Theodor Mommsen, the great German archæologist and historian. It was more a pious pilgrimage than a journey, for we both felt that, at Professor Mommsen's great age, eighty-five, it was hardly probable that we should ever meet again on earth. The interview was long and serious, and took on the form of instruction and advice from the great scholar concerning the problem of the world's civilization. He declared his belief that close friendship and good understanding between Germany, Great Britain and the United States, the three great Teutonic nations, were indispensably necessary to the solution of this all-comprehending problem ; and his parting injunction was : "Preach this doctrine far and near, wherever and whenever occasion will permit." When asked if his view was concurred in by Germany's leading men, he answered unhesitatingly in the affirmative.

It would be too much to say that this exhortation, though coming from one of the world's most learned men, is the sole reason for the appearance of this paper. The writer himself has long held the opinion expressed by Professor Mommsen, and has only become strengthened in it by fuller study and maturer experience. It appears to him that the time has at length arrived for the calm and friendly discussion of this momentous subject;

and such expressions as those of Professor Mommsen — and he has heard many such from Germans of only less note than the great historian — have emboldened him to begin it.

Between the three peoples there is, in the first place, ethnical affinity. The people of Germany, Great Britain and the United States are substantially of Teutonic stock. In a large and general sense, Germany is the motherland of Great Britain, as Great Britain is the motherland of the United States. Moreover, Germany is not merely the motherland of our motherland ; she is in some degree, racially, the immediate motherland of the United States. This ethnical affinity, I grant, does not count for much if it means only that the same blood courses through the veins of the majority of Germans, Englishmen, Scotchmen and North Americans. But if it has produced and maintains a substantial consensus of opinion concerning rights and wrongs, liberty and government, policy and interests, it counts for very much. It has then become an ethical as well as an ethnical bond, and such a bond is the strongest that human history forges. Now who that really knows anything about the history and institutions of Germany, Great Britain and the United States can, for one instant, doubt that such a bond exists between the peoples of these three great countries ; or that the common institutions and ideas that bind them together separate them as distinctly from the Romanic, Celtic and Slavic peoples of Europe, and from all other peoples in other parts of the world, as the waters of the Atlantic are separated from those of the Mediterranean at Gibraltar?

Let it be noticed, at this early point, that I am careful in drawing these lines. There is a population of some fifteen millions in Sweden-Norway, Denmark and the Netherlands, which, taken man for man, is probably the purest Teutonic stock, and the best stock, in Europe. I mean to include them in all that I have to say in regard to the ethnical and ethical affinity among the Germans, Britons and North Americans, and in all that I have to say in regard to the necessity of understanding and co-operation between Germany, Great Britain and the United States in the great work of the world's civilization. Politically they are not great powers, but physically and morally they are a magnificent force, and in connection with the three great Teutonic

powers they can render invaluable service to the spread of Teutonic culture. There are also some fifteen millions more of Teutons in the Swiss Republic and the Austro-Hungarian Empire, who have done most of what has been done for the upbuilding of those states. They also, if properly handled, will prove of great aid in the enterprises of the three Teutonic powers for the extension of civilization.

Now what are these points of ethical and political consensus in which the Teutonic peoples so closely agree, and in which they are so clearly distinguished from all other peoples?

First and most important of all is their high sense of individual worth and of individual rights. From the days of Tacitus to those of Castelar this has been recognized, even by writers of Roman and Romanic blood, as the prime characteristic of the Teutonic peoples. Out of it has sprung their profound respect for individual life and liberty, for the chastity of women and the sacredness of the home, for freedom of thought and of conscience, and for the security of private property—impulses which, as time and thought and experience have given them form in the understanding, have become elaborated into the so-called bills of rights, which are the chief glory of their political constitutions and the realization of which is the chief end of all their governmental arrangements. It is not too much to say that the individual initiative in enterprise, the individual energy in research and the individual conscience in ethical development, which have thus been fostered, sustained and encouraged in these great states, have been the prime forces in the civilization of the modern world. Over against these qualities and principles and institutions are to be found, in the other parts of the world, less respect for human life, individual liberty and individual worth; lower appreciation of woman and the home; less regard for the security of property; paternalism and despotism in government, relieved by periods of temporary anarchy; slavish attachment to precedent, and the ethical and religious conscience crushed beneath the weight of a priestly system of authoritative religion and morals.

In the second place, these three states have reached a substantial consensus of opinion in regard to the principle of local self-

government. Two of them have the system of federal government, constructed and defined by written constitutions ; and in the institutional life and history of the other the custom of local self-government is so firmly embedded that Parliamentary acts are passed to aid its development, but never to destroy it nor even trench upon its proper sphere. The local self-governments are not only the most effective possible instruments for safeguarding local interests and working out sound local policies, but they are the best possible popular seminaries for political training. It is in and through them that latent political talent is best brought to light, disciplined and developed. In contrast with the principle and practice of the Teutonic states upon this subject, almost all the other states of the world govern locally by means of mere official agencies of the central government. Little opportunity is given for any variety of local custom upon matters of even the most minor importance ; and thus little chance is allowed for a variety of experiences in dealing with like subjects, out of which, by a comparison of results, a more intelligent custom or regulation may be attained. The interest of the people in their local government is not only not encouraged, but destroyed ; and political ignorance rather than political education is the outcome of the system.

In the third place, these three great peoples have planted all of their institutions upon the basis of the national state and are developing them through the realization of the national principle. Now the meaning of this is manifold and most important. It means that the boundaries of states shall correspond with the physical boundaries of natural defense and the ethnical boundaries of population. It means that the larger part of the population within the given physical unity has arrived at a consensus of opinion concerning rights and wrongs, interests and policy, and that this larger part has become the real sovereign power within this unity and over this population. It means, therefore, that the state has become really democratic, whatever may be the aspect of its governmental organs, and that the powers of the government are and must be employed for the welfare of the governed and not for the advantage of a governing race or class or caste. It means, lastly, that in the expansion of the power

of such states over other lands and populations the prime purpose is the carrying of the civilization of which they are the organs into the dark places of the earth for the enlightenment and advancement of the inhabitants of these dark places, and that any particular advantage which they themselves may gain from expansion shall be incidental and secondary and shall not conflict with the end which alone justifies and sanctifies the movement. Contrasted with this, the Roman and Romanic genius, when not corrected by a Teutonic element, stands for universal empire, and the Slavic genius stands for universal anarchy. Each of these is a menace in principle to the peace and civilization of the world ; while the system of national states, at the same time that it solves the problems of individual liberty, local government and general government, has produced the system of modern international law, which is gradually establishing and securing the peace of the world.

Lastly, when we regard the finer elements of civilization and culture, science, literature, art and music, we become immediately aware of a conscientious thoroughness, a high moral tone, and a sound and truthful imagination on the one side, and more or less superficiality, looseness and fancifulness on the other. On the whole, I venture to say that, to any profound and thorough student of the world's civilization, the proposition will appear not more and not less than the sober truth that the Teutonic genius and the Teutonic conscience are the two greatest forces in modern civilization and culture.

If this be true, then why should not the three great political representatives of this genius and conscience co-operate in bearing their civilization and culture into the other parts of the world? In the nature of things and in sound principle there is no reason why they should not, and there is every reason why they should. But in the world of fact, petty fact in most respects, there are obstacles to the attainment of this result. The existence of such obstacles is evidenced by a certain hostile feeling between some parts of the population of these great states. In Germany such a feeling is found chiefly among the bumptious and chauvinistic youth ; in the United States chiefly among naval officers and those whom they influence ; and in England, as I am told by

Englishmen of judgment and standing, it is rather general. In Germany, the hostile feeling is directed almost wholly against England ; in England it is directed almost wholly against Germany ; and in the United States it is directed chiefly against Germany. In all three cases it rests largely upon misunderstanding, or upon exaggeration of real grievances.

In Germany, dissatisfaction with England and the English, in so far as it is not attributable to the rather arrogant personal bearing of Englishmen generally, goes back at least to the period when the present Emperor's mother was, as crown princess, working against the Russian-friendly policy of the Emperor William I and Prince Bismarck, and endeavoring to make the new German Empire an ally of Great Britain. It was fresh then in the memory of all Germans that Russia's attitude in the Franco-Prussian war had been of great service to Prussia, and it was felt by all that it would be base ingratitude to turn the back upon Russia by entering into intimate relations with Russia's natural enemy in the Orient. Moreover it was regarded by the German government and the German people as a very dangerous thing for Germany, then just in the process of establishing her newly found unity, to irritate Russia by such a change in her diplomatic relations. The vigorous and continuous insistence of the crown princess — "the English woman" as she began to be called — upon a pronounced Anti-Russian policy, at a moment so inopportune, produced a feeling among almost all classes of the German people that Great Britain would be willing to sacrifice Germany's most vital interests in order to use Germany against Russia. In a sentence, it produced the feeling that Great Britain was unconscionably selfish in her foreign policy. The short reign of the Emperor Frederick and the speedy accession of William II, who held, at first, firmly to the diplomacy of his grandfather and of Bismarck, removed this source of irritation; and the feeling against Great Britain had largely subsided, when the British movements in South Africa and the Boer war revived among the Germans the belief that the British were a wholly selfish people and wanted the whole world brought into colonial subordination to them. The Boers were Teutons, as nearly akin to the Germans as were the English themselves ; and it seemed

to the Germans, from the idealistic point of view, that Great Britain was engaged in an unwarranted encroachment upon well-established rights, and from the point of view of trade and of commerce, that the British were pursuing a policy injurious to Germany's interests in South Africa. The German government, indeed, held itself neutral in the contest ; but there were many manifestations among the German people and in the German press of a hostile feeling against Great Britain. That feeling is, however, now again abating, and in a short time it will be a thing of the past.

The feeling in England against Germany rests chiefly upon resentment against the attitude of the Germans, or rather of a part of the Germans, during the periods and upon the two questions just considered, and upon the commercial rivalry between the two countries. The first may be regarded as temporary and as relatively trivial. The second is more serious. From the condition of a chiefly agricultural country, England has seen Germany advance, during the last thirty years, to the position of a great manufacturing and commercial rival. It is not an easy thing for the old sovereign of the seas and of the world's trade to become accustomed to a competition in the domain which she has so long considered exclusively her own. She has not only been forced to take less for her products and her services in the world's markets and in the world's intercourse, but she has been driven to modify her methods and manners in dealing with other states and other peoples. Now all this is rather galling to British pride and condescension, as well as depleting to British pockets; but it is wonderfully advantageous to the rest of the world, and the Britons will be compelled to see, in the long run, that the existence of such a rivalry, when fairly pursued, furnishes no just cause of complaint or hostile feeling. This too must be set down as a vanishing obstacle to a friendly and intimate relation between Germany and Great Britain.

As I have already indicated, a friendly feeling in Germany toward the United States is, at present, practically universal. I have spent a considerable part of the last three years in that country, and I have heard everywhere and among all classes the earnest desire for good understanding and intimate relations

At the close of the Civil War began the great exodus of students to the German universities. Before that time a few Americans, such as Everett, Bancroft, Motley, and others, had studied in Germany: but by far the number of the American students who went abroad to get work went to France or to England. The attitude of France and England toward the cause of the Union during the war repelled the young men of the North from attending institutions of learning, and the South was too much im-
poverished by the struggle to send her youth anywhere. From the present time, the principal German universities have filled their American students by scores and hundreds; and when, upon their return to their native land, have gradually taken possession of the professorial chairs in the leading universities of learning in this country. It is no exaggeration to say that the control of the higher education in the United States is

with the United States, and I have heard nothing in the opposite direction from anybody of any reputation or importance. In the court and governmental circles this desire is most pronounced, earnest and, I fully believe, sincere. During the period of the conflict between the United States and Spain, there was a feeling in Germany that the United States was proceeding rather ruthlessly in the work of seizing the Spanish colonies. Many of the best, purest and most unselfish minds among the Germans were deeply astonished to see the free Republic, the ideal of their thoughts and hope, assuming the rôle of militarism and empire, and, in the height of their emotion, they gave expression to words of rebuke and reproach. Others, not moved by such ideal considerations, had financial interests at stake which appeared to them seriously threatened through the seizure of the Spanish colonies by so great a power as the United States, and they exerted what influence they had to prevent it. The German government, however, preserved its neutral position and discouraged any European coalition in behalf of Spain; and during the past few years the generous treatment of Cuba and the sacrifices made for the inhabitants of the Philippines have taught the German people that the Republic can have colonies and a world policy without becoming a military despotism, and that the honest interests of foreigners are, and will be, better protected throughout the old colonial dominion of Spain by the new sovereign than by the old. There is now scarcely a trace to be observed of the displeasure awakened by the events of 1898.

Down to within the last half-dozen years, the cordial feeling on the part of the people of the United States for Germany had, for a century and more, experienced an almost unbroken development. The high estimation in which Washington and Frederick the Great held each other, and the fact that Prussia alone of all the European powers would enter into a treaty of commerce with the United States during the period of our Confederation, the period of our great weakness and need of foreign friendship, served largely to overcome the hostility against the Germans produced during the Revolution by the acts of the Landgrave of Hesse, and placed the relations between the chief power in Germany and the United States upon the true basis. From that

period to the era of the Civil War in the United States the friendship between the United States and all the states of the German Confederation grew and developed. An extensive immigration from those states into our Northwest had been for some years in progress before the outbreak of the great struggle for civil liberty and national unity. During that terrible crisis in our history, Germans filled, as soldiers, the regiments of the Union and, as officers, drilled and disciplined its forces, and led them to battle and to victory. Their knowledge of military science and tactics was invaluable to the cause of the Union and contributed greatly to the ultimate triumph of the cause. The friendships between Germans and Americans, produced by comradeship in camp and campaign, also served to unite the people of the two countries in the bonds of a better understanding and a stronger affection. To this must be added the very important facts that during the struggle for the existence of the Union, the German states never wavered in their official neutrality, and the German people at home watched with sympathy and pride the loyalty of their kindred to the great cause. They seemed to have a sort of presentiment and prevision that the success of that cause would help powerfully in bringing about the realization of their national ideal for the Fatherland.

From the close of the Civil War began the great exodus of American students to the German universities. Before that time a few notable Americans, such as Everett, Bancroft, Motley, Longfellow and others, had studied in Germany; but by far the greater number of the American students who went abroad to pursue their work went to France or to England. The attitude of France and England toward the cause of the Union during the great crisis repelled the young men of the North from attending their institutions of learning, and the South was too much impoverished by the struggle to send her youth anywhere. From 1870 to the present time, the principal German universities have counted their American students by scores and hundreds; and these men, upon their return to their native land, have gradually taken possession of the professorial chairs in the leading universities of learning in this country. It is no exaggeration to say that the control of the higher education in the United States is

now in the hands of men who have been educated in the German universities, who read and speak the German language, who know the German literature and science, and who entertain a strong affection for the land and people where and among whom they developed their ideals of life and culture. This is a powerful bond of connection between the two countries.

The unfortunate episode in Manila Bay and the anxiety of the German holders of Spanish-Cuban bonds caused in the United States, in certain circles, especially the navy circle, a coolness of feeling towards Germany. This has now, however, given place again substantially to the old cordiality in the minds of most, especially since it has become known that Germany was at that period as much opposed as England to any European coalition against the United States. This correct turn in feeling will become still more pronounced when the actual reason of the conduct of the German admiral in Manila Bay shall be generally known and appreciated. He had not the slightest idea of contesting any plan of the American forces in reference to Manila or the Philippines. He supposed — as all the world supposed and had full reason from our history, our previous policy and our past assurances to suppose — that the United States would never think of making conquest of the Philippines. He supposed that the destruction of the Spanish fleet was the ultimate purpose of the Americans, and that the Spanish and native forces on the land would be left to try conclusions between themselves. There were German interests to be protected in case of such a conflict, and he conceived it to be his duty to place himself in a position to discharge this obligation. This explanation of the admiral's conduct has been made to me so often by Germans of high standing that I am obliged to accept it as the truth. When viewed with the knowledge and under the calmer conditions of the present day, there was absolutely nothing in the attitude of the German government or the German people during the crisis of 1898 which was not entirely compatible with perfectly friendly relations between the two countries; or, at the very worst, nothing which should excite in any fair mind anything more than a passing displeasure.

One of the grounds sometimes alleged in the United States for distrusting Germany is that this power is supposed to intend, if

possible, to establish her authority over certain parts of South America, *viz.*, those parts which, like Southern Brazil, are largely peopled by German immigrants. Such a desire has been expressed by some Germans in Germany; but among the Germans in South America no desire has been shown to be brought under the rule of their mother country. No such scheme has received any sort of encouragement from the German imperial government, nor is any such eventuality now regarded by any Germans of position or influence as within the range of useful political speculation. The idea that Germany is likely to question or attack those American interests that are expressed in the Monroe doctrine is simply a political nightmare. In fact, those interests and that doctrine have never received, in the conduct of any European power, more ample recognition than was accorded by Germany, Great Britain and Italy in 1902, when, before attempting to force Venezuela to pay claims due to their subjects, they assured the United States government that no territorial occupation was intended.

During the greater part of the independent existence of the United States there has been, among its citizens, a prevailing feeling of hostility towards England and the English people. The political and national contest between the two countries, concluded by the treaty of 1783, was followed by a commercial struggle of thirty years, ending in the war of 1812-15. For nearly half a century, the enmity between Britons and Americans grew and developed until the Americans came to regard England as their traditional and natural foe. The policy of the United States, after 1815, to shut itself off from the rest of the world and devote its energies exclusively to its own national development tended to foster this feeling of aversion towards the motherland; and the generation of 1815 had not passed from the stage before the Oregon controversy fanned the smothered fires of hatred against England into flame again. And after the peaceable settlement of this question, not fifteen years elapsed before the attitude of the British government toward the Union in the great crisis of its existence roused once more the wrath of loyal Americans against the offender. The treaty of Washington and the Geneva Arbitration re-established friendly relations between the governments

of the two countries; but the American people, both North and South, only too generally continued to regard Great Britain as a selfish, perfidious and treacherous nation. Nearly twenty years of gradually improving relations, not only between the governments, but also between the people of the two countries, now followed, when, on December 17, 1895, President Cleveland's Venezuela message roused once more the latent anti-British passion in the American heart to a furious and largely senseless outburst. The tact and prudence of the British government saved the world from the terrible scandal of seeing two of the chief bearers of civilization insanely clutching at each other's throats over a matter that was not worth the sacrifice of a single human life to either of them; and once again outwardly friendly relations were re-established. Finally, the clever diplomacy of Salisbury and Chamberlain, during the years 1897 and 1898, produced a cordiality of feeling towards Great Britain among the people of the United States which had never before existed, at least in any such degree. There is little question that their prime purpose in it all was to distract the attention of the United States from the doings of the British in South Africa and to forestall any active sympathy on the part of the United States for the Boer republic in the death struggle which was rapidly approaching. But the republican fanaticism, I do not like to say conscience, of the people of the United States, has become, as the English foresaw, so substantially modified by the new experiences of colonial conquest and rule, that the discovery of the purpose of the extraordinary courtesy and deference of the British government during the conflict between the United States and Spain has had little modifying effect upon the newly established affection of the Americans for their British cousins. In fact we may almost say that the beginnings of an Anglomania are apparent, seen especially in the imitation of British pronunciation and social customs, the playing of British games, and the flocking of American heiresses to the motherland for the very generous purpose of refurbishing, with democratic money, the somewhat faded trappings of British aristocracy. While plain Americans are not exactly edified by such manifestations of good understanding between the two countries, they, or at least those of them who can contemplate things objectively, are

gratified that such an understanding does at last exist; for undoubtedly the most important element in the commercial as well as the diplomatic interests of the United States is close friendship and free and active intercourse with Great Britain.

Resurveying this whole question of reciprocal feeling between the peoples of the three countries, it becomes tolerably manifest that the chief obstacle of this nature in the way of a good understanding between them is the rather dogged and somewhat unreasonable dislike entertained by the English for the Germans. Perhaps it might help the English to put this aside if they should be frankly told that the close friendship which they seem to be assiduously cultivating with the United States can never reach the best result, I might as well say the desired result, if the cost of it to the United States is to be estrangement from Germany; because, besides the sentimental reasons for close friendship between the Germans and the people of the United States which I have already indicated, there exists a practical reason of the very highest political importance. It can best be explained by asking and answering the question: What would the German Empire be compelled to do, if England and the United States should form an alliance leaving Germany out? Anybody who knows anything at all about European diplomacy can answer this question off-hand. Germany would be driven back into the arms of Russia, dragging Austria with her certainly, and Italy probably. The entrance of France into the imagined Anglo-American alliance would be no offset to this, even if it be supposed that France could be induced to take such a step. The supposition is most unlikely, for such a policy would be highly dangerous to France herself. The French cannot afford to do anything which would cement the interests of Russia and Germany. They know that well enough; and in any alignment which would bring Russia, Germany and Austria together, they would almost certainly seek their own safety in unison with the continental powers. In a sentence, an Anglo-American alliance, from which Germany was excluded, would in all probability provoke a counter-alliance of the principal continental states. Great as would be the value to the United States of a close relation with Great Britain, it would still not be sufficiently great to offset the dis-

advantage of such a situation. While I am sure that the Americans are a far more sentimental people than the Europeans believe them to be, I am equally sure that they are an eminently practical people; and they would hardly commit such a practical blunder as to give occasion for the consolidation of continental Europe against American trade and diplomacy. Nor is there, as I have indicated, any sentimental reason for the United States to enter into an alliance with Great Britain unless Germany be included. There is every sentimental reason against it. If Great Britain is our motherland, Germany, as has been already said, is the motherland of our motherland; and when the Americans consent to dwell under the same diplomatic roof with the mother who has chastised them, they are not going to allow the grandmother, who has always taken their part, to be left out in the cold. Interest, sentiment and duty to the world alike require the three countries to come together before any two of them can do so; and the Britons will do well to heed the views and feeling of a very large part of the American people on this subject, lay aside their imagined grievances against the Germans, their natural friends, and cease coquetting with the Romanic peoples, who, if ethnical, social and moral opposition breed enmity, may be called their natural enemies.

It must not be understood, however, that there is nothing in the way of a cordial alliance between the three great Teutonic countries except petty and passing jealousies and largely puerile animosities. There are two very stubborn matters of fact that present the most serious obstacles to such a consummation. I have reserved the discussion of these two matters for the end of this paper, because of their apparently almost insurmountable nature. They are the protective tariff of the United States, and the position and aspirations of Russia, both in Europe and in Asia.

I have no intention of dealing in this paper with the protective tariff as an economic principle, further than to say that it is not abstractly a right principle or a wrong principle, but a policy whose correctness or incorrectness depends upon the circumstances of each country at a given time. There is a time in the history of every state when the protective tariff is a natural, if not neces-

sary, economic arrangement. When a state is in the period of national development; when it is shutting itself off largely from the world and working out its own political and industrial independence, then is the protective tariff natural and desirable, if not absolutely necessary. But after this period has passed, and the particular state has entered upon the next phase and period of its development, the phase of world intercourse and the period of colonial extension, then is the protective tariff an anachronism. It then stands squarely in the way of the accomplishment of the very purpose of purposes for which the state in this phase and period of its development exists, *viz.* world civilization; because the realization of this purpose requires the freest and fullest interchange of things and ideas between each world-state and the rest of the world. Every student of history understands that in the advance from one period to another in the life of a state, the laws, institutions and policies of a preceding period will, for a time, lap over into the succeeding period and create contradictions between the old forms and the new spirit and ideals — contradictions which are, at first, felt rather than seen, but which grow more and more clear in conscious thought until at last they come to be regarded, both at home and abroad, as intolerable abuses. Before this extreme relation is reached between the old and the new, the past and the ever changing present, it is the part of wise statesmanship to see to it that the old shall be transformed by the spirit of the new, so that the laws, institutions, and policies of the state shall keep pace with its ideals in the march of civilization. This is the supreme duty of the state to itself and to the world; and if it does not discharge this duty, it will arouse the world's sense of grievance against it. It is no proper excuse for a state to say that its own interests require the pursuit of an anachronous policy, and it is criminal braggadocio for it to say that it does not care for the feeling and opinion of the world. This is simply to ignore its world duty, for the sake of a particular welfare which, after all, is imaginary. Its true welfare will always go hand in hand with its world duty; and it will proceed upon the path of true progress with much less deviation and delay if it keep its eye upon the ultimate goal for the attainment of which it exists, than if it regard only that por-

tion of the pathway lying just before it. If a state fails to discharge the great world duty of bringing its laws, institutions and policies into line with its own development and with the spirit of the age, it is an offender against the other states of the world; and if its delinquencies cause irritation and ill-feeling in its intercourse with other states, its proper conduct is not to create armies and navies with which to back up its offence, but to modify its laws, institutions and policies — not indeed so as to conform with the selfish interests of other states, but so as to discharge its own high duty to the civilization of the world. Now it does not require any great acumen to see that the persistent high-protective policy of the United States has, in the new period of our world activity, become offensive to the other civilized states of the world, and, in the light of the above principles which I have been endeavoring to expound, justly offensive. Our tariff stands in the way of a good understanding with any of these states. It tends to provoke them to retaliation, and that leads to hostility. It is an obstacle which the United States ought to remove. It is the duty of the United States to the world's civilization to remove it. And the United States cannot complain if displeasure is manifested at its delinquency in the discharge of this duty.

The other real obstacle to an intimate and permanent understanding between the three great Teutonic countries is the position of Russia, which constitutes a perpetual and fearful menace to Germany, Austria, and Sweden-Norway. No one of these states can with safety make any move which might bring down upon it this colossal power. With a population equal to that of all three of these states together, a population in constant unrest and restrained from bursting all political bonds only by an autocratic government which recognizes none of the limitations of conscience and right reason, this Slavic giant stands ready to strike down the Teutonic nations upon its western border at the first movement made by any one of them to escape from its influence and virtual control. It is difficult for the people of the United States to understand this situation. The friendly attitude of the Russian government during our own national struggle with secession and the freeing of the Russian serfs by an edict of the Czar, are the principal facts about Russia known in the

United States, and these facts have created a favorable feeling on the part of the people of the Teutonic republic towards the Slavic empire. Americans do not generally know that this great Muscovite population, with its almost irresistible anarchic spirit and tendencies, is scarcely held in check by a quasi-Teutonic régime at St. Petersburg, to which the states of Western Europe must go in fear and trembling, seeking protection against inundation by Slavic invasion. They do not generally know that Russian friendship for the United States does not rest upon one single element of likeness or one single grain of sympathy between the peoples of the two countries, or upon one single parallel between the political and religious institutions of the two countries, but most largely upon hostility to England, Russia's natural enemy both in power and in civilization. And when they remember with admiration the emancipation of the Russian serfs, they forget that it is one of the oldest devices of royal autocratic politics for the crown to call the masses around itself for the purpose of overcoming the defiance of the nobility. The recent tyrannic proceedings of the Russian government against Finland and its people, depriving them of their historic autonomy and their traditional rights without the slightest preceding disloyalty on their part, has in some degree opened the eyes of the people of the United States to the terrible contradictions in morals, politics and general civilization which obtain between Russia and the civilized states of the world. If the United States has a natural enemy in political principle in the world, that enemy is Russia; and I venture to prophesy, although I know that prophecy is dangerous, that Russia will prove herself, in the next twenty-five years, almost as hostile to the United States as she is now to Great Britain. But the people of the United States have not yet become sufficiently conscious of the Slavic peril to Western civilization to really appreciate the situation of Germany, Austria and the Scandinavian states. A number of times during the last two centuries, half-Teutonic Czars have protected Prussia and Germany against destruction by Slavic Russia. But the power of Muscovite Russia is growing, and no one can say how long the Czar will be able to control the impulses of his Slavic subjects. For Germany, international intimacy with Russia is thus not only

unnatural but unreliable; and yet Germany cannot escape from it, she cannot even show signs of a desire to escape from it, until something [equally] effective is found to take its place. The same is true of Austria and of Sweden-Norway. One of Austria's richest provinces, Galicia, and the lands of the Lower Danube, are constantly menaced; and it is the general testimony of intelligent travellers of recent years in Sweden-Norway that the gravest apprehension for the future has taken possession of the popular mind in view of the fate of Finland; and yet neither of these states dares to display its distrust or suffer its relations to Russia to become unfriendly. They must all remain quiescent, suffering their own internal political development to be held back by their enforced intimacy with the great despotism which is enthroned over the vast mass of anarchic elements which threatens to overwhelm them. They can do little for the world's civilization in such a situation, in fact they can scarcely maintain their own.

It is entirely evident from all this that Germany dares not make advances for alliance with Great Britain and the United States, much as she may desire it. It is for these two powers, which, chiefly by reasons of geography, stand in an independent position, to take the first step, and to make that step so decisive that the Teutonic states along the Russian border will be safe in accepting their advances. It is the United States above all which is in best position to take the initiative in such a movement. The Slavic peril does not threaten far-off America, while the lines of the British Empire in Asia are within striking distance of the Russian frontier. Moreover, the Americans feel a strong sympathy and maintain a warm friendship with their fellow Teutons on the European continent, while the English are showing their pique against German enterprise in manufacture and commerce by coquetting with the French and cultivating the friendship of the Italians.

As in the case of the protective tariff obstacle, so in the great Slavic obstacle, it is the United States upon which the transcendent duty falls of taking the first steps to bring the Teutons of the world together in the great work of world civilization. It is not only a duty, it is a glorious privilege, a magnificent oppor-

tunity. The leadership in directing such a combination of reason, righteousness and power for the civilization of the world would be a divine appointment in a far higher and truer sense than was ever the tenure of pope, emperor, or king. It would be a mission fitted to rouse the patriotism, self-sacrifice and devoted service of every true man in whose mind and heart the spirit of Teutonic culture has found a resting place. It is to be devoutly hoped that this great country of ours will be able to rise to the occasion, and will allow no national nor even continental narrowness to hold it back from assuming its proper place, the place now fairly within its grasp, at the head of the column of nations in the march of universal progress. There is no danger to the United States in occupying this position. Russia is too far removed from us by land, and is too insignificant upon the sea, to give us any uneasiness. The Romanic states would soon find their own interests substantially in line with those of the great Teutonic combination, simply because its purposes, if realized, would create a world condition in which the true interests of every civilized state would be subserved and enlarged, and in which every uncivilized community would be directed and impelled toward the attainment of a civilized status. A harmony of operation, or a co-operation, between the great Teutonic powers would menace no interest of civilization anywhere. Barbarism has thrown, and probably will again throw, obstacles in the way of their advance; but it has been and will be good for barbarism, whether primitive or luxuriously effete, to be brought under their sway. The sense of justice and of right inherent in the Teutonic conscience has always gone and will always go hand in hand with the enterprising forceful spirit; and the hardness sometimes apparent in the sway of the Teuton would undoubtedly be modified by the co-operation of the three great branches of the Teutonic stock in the enterprises of civilization. In a word, nothing can be seen or apprehended as the natural result of such co-operation except peace, progress, and prosperity throughout the world.

JOHN W. BURGESS.

DECEMBER, 1903.

OUR MOHAMMEDAN SUBJECTS.

AT the date of President Roosevelt's "amnesty" proclamation of July 4, 1902, the only inhabitants of the Philippine Islands who were in revolt, and to whom that proclamation did not apply, were the Moros. The President declared that the Moros had not yet "submitted to the authority of the United States." These are the people who were supposed to have been brought peaceably under American authority by the agreement made with the Sultan of Sulu in 1899. Hostilities between their chiefs and the forces of the United States began in the spring of 1902.

Some six weeks after the President's proclamation, on August 18, 1902, it was reported from Constantinople that "the non-execution by the Turkish government of agreements reached long ago on several questions affecting the interests of American citizens" had "led to somewhat strained relations between the United States Legation and the Porte"; and that Minister Leishman had informed the Porte that he would not discuss "other matters" until the terms of the settlements already agreed to had been carried out. On the same day it was cabled from Manila that the Moros in Mindanao were renewing their attacks upon the outposts and pack trains of the American column at Lake Lanao; that the commanders of the American forces in Mindanao had reported "that aggressive action against the Moros" was necessary; and that they asked "permission to move against Bacolod and other strongholds of the hostile Mohammedans." In addition, a press dispatch from Washington reported the approval by General Chaffee of these requests. For the Moros rejected all friendly overtures made to them by the commander of our forces, and renewed the attacks upon American soldiers which had been made from time to time since the preceding May. Neither the expeditions sent against the various sultans of the archipelago nor the continuous defeat that the Moros suffered at our hands seemed to have any effect in reconciling them to our rule; and

though the vigorous measures taken by Captain Pershing were apparently crowned with success, the insurrection broke out again in 1903.

The *New York Times*, in a minor editorial of October 29, 1902, said:

The Moros have no known grievances against the Americans. No attempts have been made to change their customs or to decrease their liberties, and the consideration shown them in these respects was so great as to excite the criticism even of the anti-imperialists. . . . There is something of a mystery in their present misbehavior, for they began well enough, and for a considerable period made no trouble for the few Americans sent among them. This hints at lack of tact somewhere, and the hint might be worth following up.

Now, in the same journal, in its issue of April 22, 1902, we read:

The early "pacification" of Mindanao was at the time attributed to the skill of General Bates, our pioneer in the island. . . . There is no question about the efficient discharge by General Bates of the duties which fell to him. But the conciliatory manner in which he was met was probably as great a surprise to himself as to anybody else. It was to the skill with which an appeal was made to the Sultan of Turkey, in his character of the Mohammedan pope, and to the action which, through the Sheik ul Islam, he was induced to take, that we really owe the spirit of hospitality in which we were received.

And again, on May 6, 1902, an editorial refers to the "clever diplomacy through which the Sultan of Turkey was induced to interest himself in our behalf, to the extent of assuring his co-religionists in the Philippines that the United States did not share the proselytizing tendencies or methods of Spain."

It is a question — the whole situation in Turkey at that time being taken into account — whether the government of the United States is to be congratulated upon this way of attaining its object — upon the "skill with which an appeal was made to the Sultan," or upon the "clever diplomacy" through which he was "induced to interest himself in our behalf." The conditional agreement between the Sultan of Sulu (Jolo) and the United States was negotiated by our commander, General Bates, during the summer

of 1899.¹ The principal features of this agreement were as follows: American sovereignty over the Moros to be recognized; no persecution on account of religion to be allowed; the United States to occupy and control such parts of the archipelago as public interest should demand; all persons to have the right to "purchase land with the sultan's consent"; the introduction of firearms to be prohibited; piracy to be suppressed; the American courts to have jurisdiction except as between the Moros; and the sultan's subsidy from Spain to be continued.

The fact that President McKinley, in his message at the opening of the first session of the Fifty-sixth Congress (December, 1899), in referring quite at length to Turkey, made no mention of the Philippines or of the "friendly offices" of the Turkish Sultan, might seem remarkable were it not for the fact that the agreement with the Sultan of Sulu was not submitted to the Senate until December 18. What is really remarkable, however, is that we should have availed ourselves of the interposition of the "Mohammedan pope," at a moment when our relations with the Sublime Porte were so unsatisfactory. It was only fifteen days later that our minister at Constantinople, Mr. Oscar Straus, left that city, *en route* for Washington, "for consultation" with the United States government as to the state of affairs in Turkey; and as late as June 18 of the following year, he was still "on leave," apparently delaying his return to his post until satisfaction should have been given to our demands. Mr. Straus, in fact, remained away until his successor, Mr. Leishman, was appointed.

In his message of December, 1899, President McKinley said:

In the Turkish Empire the situation of our citizens remains unsatisfactory. Our efforts during nearly forty years to bring about a convention of naturalization seem to be on the brink of final failure through the announced policy of the Ottoman Porte to refuse recognition of the alien status of native Turkish subjects naturalized abroad since 1867.

Our statutes, the President added, do not allow our government "to admit any distinction between the treatment of native and

¹ The agreement was signed August 10, but was not submitted to the United States Senate until the following December, its text being made public December 18.

naturalized Americans abroad." This causes "ceaseless controversy" in cases where "persons owing in the eye of international law a dual allegiance are prevented from entering Turkey or are expelled after entrance." "Our law, in this regard," the President mildly remarked, "contrasts with that of the European States"; the British, for example, not claiming "effect for the naturalization of an alien in the event of his return to his native country, unless the change be recognized by the law of that country or stipulated by treaty between it and the naturalizing state." Other questions pending at the time were those as to extra-territorial jurisdiction in Turkey, claimed by the United States government under the treaty made in 1830; claims for property of American missionaries at Harput, Asia Minor, destroyed at the time of the Armenian massacre in 1895; and a claim for indemnity for the murder of Frank Lenz, on the Turkish frontier, in 1894.

During the summer preceding this message of the President, the efforts of our envoy, Mr. Straus, to secure an interview with the Sultan, at which the settlement of these various claims could be urged upon him, had been unremitting. The difficulties which he encountered were not flattering to our national pride. From a perusal of the volume of *Foreign Relations* for that year, it will be seen that, for a considerable time, Mr. Straus's efforts remained without result. After much shuffling and delay, the Sultan sent word through his chamberlain that a day would be appointed for an audience; that his object had been to arrange the matter of claims in advance, in order that the interview might be pleasant; and that, with this object in view, he had directed the minister for foreign affairs "to reply to Mr. Straus, so that at the audience the question of claims need not be brought up." When at last — but not before September 22 — Mr. Straus was received in audience by the Sultan, the latter, in the course of the interview, referred to the *iradé* for the purchase of a warship, saying that with the making of the contract the American claims would be "wiped out," "and that he would request me not to discuss with him this matter further, as it is arranged for." This strong hint from the Sultan apparently had its effect:

I did not directly go further into the subject [Mr. Straus continues] but asked what answer I should give my government as to when these claims would be "wiped out," and when the *iradé* for the rebuilding of the Harput school buildings would be given. He replied, "as soon as the contract for the ship was concluded, which would be done shortly, just as the minister for foreign affairs had stated to me."

Mr. Straus was also told by the Sultan that

immediately following my audience with him . . . he telegraphed to Mecca, it being the time of the annual pilgrimage, his wishes that the Moslems in the Philippines should not war with the Americans, nor side with the insurgents, but should be friendly with our army, and that, as I assured him, the Americans would not interfere with their religion and would be as tolerant toward them as he was toward the Christians in his empire. . . . He added that there was at Mecca, at the time he sent that message, quite a number of pilgrims from the Pacific islands, and especially their most prominent general and several other officers, and shortly thereafter they returned to their homes. That he was glad that there had been no conflict between our army and the Moslems, and that he certainly hoped their religion would in no manner be interfered with.

Mr. Straus replied that of this the Sultan could certainly feel satisfied; that religious liberty was the chief cornerstone of our political institutions.

According to the Mohammedan religion and the injunctions of the Koran, the annual pilgrimage to Mecca, here referred to, must be made at the appointed season, which is during the months *Shawwal* and *Dulkaada* and the first ten days of the month *Dulheggia*; and this period, during the year 1899, began February 12 and ended April 21. As the evacuation of the Sulu group by the Spanish forces was accomplished on May 19, and the return of General Bates from Sulu, "after having successfully accomplished his mission there," occurred in August, the connection is not difficult to perceive: the path had been smoothed for us through the kind offices of the Turkish Sultan.

With regard to the final payment of our claims, then outstanding, Mr. Straus suggested, in his communications to the Department of State, "tactful pressure"; and he deprecated any show

of force, as being undesirable. Three months later, despite all that had been promised, and despite — or perhaps in consequence of — the complaisance shown by our government, the American demands were still unsatisfied; and, in a note to Tewfik Pasha, dated December 16, 1899, Mr. Straus writes: "Our interpreter was officially informed by the Sublime Porte [apropos of the Harput outrages] that his Majesty would not consent to the rebuilding, as the American missionaries were the cause of the Armenian troubles." And, in a dispatch to the American secretary of state, four days later, he says that

the belief, held to for some years, that our missionaries were at the bottom of the Armenian troubles, or at any rate indirectly connected with the unrest that brought about the troubles, has rendered my task an exceptionally difficult one. I have again and again argued the matter to disabuse the Sultan's mind of this belief; I have again and again cautioned the missionaries to guard against giving color to this suspicion; and I have perhaps not argued in vain, as the Sultan's secretary and the grand vizier have shifted their ground, and now say they do not claim the American-born missionaries are guilty of hostility, nor that our government would permit them to act in a spirit of hostility to Turkey, but that our missionaries have in their employ many Armenian teachers who plot against Turkey.

It was at this point in the negotiations that Mr. Straus left Constantinople; and at the end of the year 1900, he was still in America. In December, 1900, Mr. Griscom, *chargé d'affaires*, cabled a request that arrangements be made for the battleship "Kentucky" (then in Turkish waters) to remain a little longer, in order that any impression of hostility occasioned by its presence might be removed. The "Kentucky" having been ordered by the Navy Department to remain, Mr. Griscom wrote that on December 10 he had attended a dinner at Yildiz Palace, accompanied by Captain Chester of the "Kentucky" and his staff; that he presented these gentlemen to His Majesty in audience before the dinner, and that after it Captain Chester and he were received in a "long private audience." Mr. Griscom says that there was no mention, during this conversation, of the diplomatic affairs then pending between Turkey and the United States, except that

the Sultan said he had purchased a cruiser from the Messrs. Cramp, of Philadelphia.

It was apparent that he regarded our questions as absolutely settled, and his evident desire was to convey this impression without using any direct expressions. . . . The dinner was a very direct compliment to the United States, as no other foreigners were invited, and necessarily I was placed at His Majesty's left hand, and at his right hand was the grand vizier and then Captain Chester.

It is plain that the Sultan, besides knowing how to make meaningless promises, thoroughly understands the art of entertaining; and that our representative — as has happened before under similar circumstances — did not prove insensible to the influence of attentions the more *empressés* in that they were, on this occasion, largely due to the presence of one of our most powerful warships. Yet can it be held that the tone adopted by the Sultan both toward Mr. Straus in September, 1899, and toward Mr. Griscom in December, 1900 — being virtually a warning not to touch upon certain disagreeable subjects — is one that could safely be taken where the envoys of other great powers were concerned? Is it to be inferred — taking also into account the fact that we send only a minister plenipotentiary, and not an ambassador, to represent us at Constantinople — that we are not yet, in the eyes of the Sultan and his ministers, a nation of the first importance; that we are still, in ever so slight a degree, *une quantité négligeable*?

In obedience to instructions received, during the winter of 1900-1901, from the Department of State, urgent representations were made to the Turkish government; and owing to these, and, possibly, to a wholesome fear of another and more positive naval "demonstration" on our part, Mr. Leishman (who in the meantime had succeeded Mr. Straus) was enabled, on June 12, 1901, to announce, in a telegram, that our claims had been settled; that the sum of nineteen thousand pounds sterling had been deposited to his credit in the Imperial Ottoman Bank; and that this sum was held subject to instructions from the department. The sending of the warship and the intimation of further measures in case of contumacy had borne fruit, as with France a few months later.

The Porte's *non possumus* gave way, as it always does, to the only argument it recognizes, that of *force majeure* — under silent protest, no doubt. But this very fact, that the Turkish government was obliged to yield, where it was felt, rightly or wrongly, that we were under obligations to the head of Islam, may partly account for developments during the summer of 1902. Thus, we find complaints made to the State Department, during the month of August, of "friction" between our minister and the grand vizier (the personal representative of the Sultan), who by his action in declining, on four successive occasions, to receive Mr. Leishman when he called to adjust certain existing difficulties, had rendered inoperative the orders previously issued for their settlement by Tewfik Pasha, minister for foreign affairs.

The principal difficulties here referred to were: obstacles thrown in the way of one of the great American insurance companies, as a result of which its agents were hampered in the transaction of their business in the Turkish dominions; the failure to surrender policies of the same company which had been seized by the Turkish authorities; the question of the emigration of the wives and minor children of naturalized American citizens who were of Ottoman origin; stopping the completion of American mission buildings at Harput, for which official permits had been granted — all of which "the minister for foreign affairs notified Mr. Leishman had been settled, and orders issued putting them into execution." Besides these, there were, from time to time, cases of the non-recognition by the Imperial Ottoman government of claims to American citizenship, made by natives of the Turkish Empire returning there after being naturalized in America. These were the "strained relations" referred to at the beginning of this article as being coincident with the renewal of attacks by the Moros upon our forces stationed in Mindanao.

The favorable action taken by the minister for foreign affairs, on subjects under discussion, having thus been countermanded or annulled by the grand vizier — who, in repeatedly declining to see Mr. Leishman, had refused "a courtesy which is always extended to even the dragomans of the embassies" — Mr. Leishman finally demanded of the Turkish pasha an audience with the Sultan, and requested him, at the same time, to make known to

His Majesty the nature of the business. He also requested of our State Department that "unless the audience with the Sultan were granted, and not only the questions at issue but the principles involved in them satisfactorily settled, he be given permission to demand his passports." As a result, the Sultan, on August 11, gave expression, through his private secretary, to a wish that Mr. Leishman would overlook the discourtesy shown him, on the ground that the grand vizier was "an old man and not feeling well," and call on him on the following day. Mr. Leishman was at first inclined to refuse positively to comply with this request "on the ground that, although such a course might perhaps result in the settlement of some of the immediate questions at issue, it would, under present conditions, neither be compatible with the dignity of the government of the United States, nor settle the important principles involved"; but, upon a suggestion from the department, he cabled, August 21, that, since "His Imperial Majesty had sent the most emphatic instructions to the grand vizier to receive Mr. Leishman at all times in a manner befitting the dignity of the representative of a great power," he had consented to resume ordinary relations. Nevertheless, he regrets that, having been forced to assume a strong position, "the settlement was not based upon broader principles," but states that "the action taken will undoubtedly have a good effect."

It may be said, in passing, that our representatives abroad are possibly in a better position than the Department of State to judge of the amount and quality of courtesy and consideration shown them by foreign governments, and the consequent effect upon the people among whom they are sojourning; certainly in a better position than the mass of our own people, who are apt to regard as of little account the unpleasant predicaments in which our ministers and consuls sometimes find themselves. The American public takes it for granted that, in the long run, we shall get what we want; that "our money will talk," even if the dignity of the Republic suffers in the mean time.

A dispatch from Vienna to the London *Times*, which was cabled to the New York *Times* and appeared in its issue of September 5, 1901, says, apropos of the French government's action in its dispute with Turkey: "Powers having Mohammedan sub-

jects are pleased with the vigorous course France has taken. They believe that the rupture of diplomatic relations between France and Turkey will serve as a warning." Now Professor Vambéry,¹ alluding to "the attitude assumed by the Liberal ministry against Turkey," asserts that Turkey is the "only power in the world which can be of great service to England's standing in Asia," and that "cordial relations" with this power "offer the best safeguard to English power in Mohammedan India." It is undoubtedly desirable that the United States, like other powers having Mohammedan subjects, should be able to count upon the Sultan's influence for good with his co-religionists, and it was particularly desirable that we should be "received in a spirit of hospitality" by the Moros and be able to avoid "any trouble whatever in the southern island"; but after having secured this influence, it is at least awkward to be obliged to bring pressure to bear upon the Sultan, and to resort finally to a show of force in order to obtain satisfaction.

As regards the probability of the assimilation of our new colonials in the island of Mindanao and the Sulu archipelago, Professor Vambéry, in speaking of the "gigantic work" of the "British civilizers," and in referring to the chances of an Indian uprising, says that

of the two chief elements in India, the Brahminic and the Moslem, the former offers less resistance and proves much more amenable to civilizing influences than the Mohammedan. In spite of the merciless rigor of the system of castes and the ritualistic laws, according to which no Vishnu-worshipper is permitted to come into direct contact with a Christian, or even to allow the shadow of one to fall upon him, the number of Hindostanees of Brahminic faith educated in English schools and employed in the British service by far exceeds the number of Moslem Hindoos similarly educated and employed. . . . Let us own it frankly. Islam has manifested this feature in its struggle with Occidental culture, in all the continent alike, throughout the whole length and breadth of its extent. . . . It is, and remains, the old and incorrigible representative of Asiatic fanaticism, which will enter into no compromises with the modern march of the world.

¹ *The Coming Struggle for India*, p. 139. See also pp. 140, 141.

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American residents from the after-effects of an assassination which had not taken place; that the Turkish government has since protested against their presence; and that news travels fast and far in Eastern countries; it may not be mere surmise that there is a close connection between this circumstance and the reported "feeling of unrest" among the Moros. In any case it is probable that until the Near Eastern question is settled — and possibly even after it has been settled — there will be, as it were, seismic disturbances and upheavals among our Mohammedan subjects, concurrent in point of time with seasons of "friction" and "strained relations" between the United States and the Porte. It is clear that our motto in dealing with the Turk might with advantage be "*gant de soie, main de fer*"; that the silk glove should be of the finest quality; and that, as a first move in the right direction, we should raise our legation to the rank of an embassy.

EDMUND ARTHUR DODGE.

NEW YORK.

SOME ASPECTS OF THE IMMIGRATION PROBLEM.

DURING the fiscal year ending June 30, 1903, the volume of immigration broke all previous records, 857,046 immigrants arriving in the United States. This fact has quickened the interest in the immigration problem and has made the desirability of restrictive measures again a question of the hour. Popular interest in the question rises and wanes with every rise and ebb of the tide of immigration; and the volume of immigration is subject to marked fluctuations, as may best be shown by a study of the figures from year to year. Without reproducing all of the facts, either in tabular or graphic form,¹ we may roughly describe the movement. In 1842,² the number of immigrants first passed the mark of 100,000 (104,565). It then increased until in 1854 it was 427,833. Dropping suddenly in the following year, it continued to diminish gradually until in 1862 it was only 72,183. With the close of the Civil War it rose considerably until in 1873, with 459,803, it exceeded the former maximum. A sharp decline followed, reaching the lowest point in 1878 — 138,469. In 1882, however, the extraordinary figure of 788,992 was reached, but the number sank again to 334,203 in 1886. From this there was some recovery, noticeably in 1888 and 1891, the latter year showing 560,319. The number then sank to 229,299 in 1898, followed by the present upward movement, culminating in the figures already cited for the year 1903.

This fluctuation seems to explain our failure to adopt drastic restrictive measures. After every notable increase in the number of immigrants such measures have been proposed; but reluctance to break with what are held to be time-honored traditions has in each instance delayed legislation until, with a decreasing number

¹ See the tables and charts in the Report of the Commissioner General of Immigration for the fiscal years ending June 30, 1902 and 1903.

² The years here referred to are fiscal years, as they appear in the familiar tables. In 1842 the year ended December 31. Beginning with 1844 it ended September 30, while with 1858 the present system of fiscal years ending June 30 begins. In the text the fractional parts of years in which the changes were made have been disregarded.

jects are pleased with the vigorous course France has taken. They believe that the rupture of diplomatic relations between France and Turkey will serve as a warning." Now Professor Vambéry,¹ alluding to "the attitude assumed by the Liberal ministry against Turkey," asserts that Turkey is the "only power in the world which can be of great service to England's standing in Asia," and that "cordial relations" with this power "offer the best safeguard to English power in Mohammedan India." It is undoubtedly desirable that the United States, like other powers having Mohammedan subjects, should be able to count upon the Sultan's influence for good with his co-religionists, and it was particularly desirable that we should be "received in a spirit of hospitality" by the Moros and be able to avoid "any trouble whatever in the southern island"; but after having secured this influence, it is at least awkward to be obliged to bring pressure to bear upon the Sultan, and to resort finally to a show of force in order to obtain satisfaction.

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of force, as being undesirable. Three months later, despite all that had been promised, and despite — or perhaps in consequence of — the complaisance shown by our government, the American demands were still unsatisfied; and, in a note to Tewfik Pasha, dated December 16, 1899, Mr. Straus writes: "Our interpreter was officially informed by the Sublime Porte [apropos of the Harput outrages] that his Majesty would not consent to the rebuilding, as the American missionaries were the cause of the Armenian troubles." And, in a dispatch to the American secretary of state, four days later, he says that

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tingent, with a residence of less than one year, may be disregarded. In estimating the survivors in 1900, the correct method, if the supposed death rate of 15 per thousand is assumed to persist, would be to take the contingent of 1891, for example, calculate the deaths for the first year, then those of the survivors in the second year and so on until 1900 was reached. This method would give us 71,452 deaths and 488,867 survivors. If, on the other hand, we assume in each year the same number of deaths as in the first, 8,405, and multiply by nine, we obtain 75,645 deaths and 484,674 survivors. Of course this more summary method implies an increasing death rate. In the illustration, it rises from 15 per thousand in the first to 17 per thousand in the ninth year. Since with the advancing age of the population such an increasing death rate is to be expected rather than a stationary rate, we may adopt the more summary method in calculating the survivors in 1900 of the immigrants of the nine years 1891-1899. Making our calculation for each year's immigrants on this basis, we find the probable number of deaths to be 268,015.

But as we were searching for 1,530,000 immigrants who had apparently disappeared, we have still to account for 1,260,000 persons recorded in the immigration statistics. This remainder probably consists of two classes: first, persons who had been in the United States before, who had visited their old homes and who then returned to the United States; second, persons who came to the United States as immigrants and who departed from the United States before the census enumeration. Among the first class of persons are doubtless many who first arrived in the United States before 1890, and who therefore figure in the census enumeration at the date of first arrival, while they figure as arrivals in the immigration figures of the decade 1891-1900. Others arrived after 1890, went back to Europe, and returned to the United States again before the enumeration of 1900. Such persons figure in the census enumeration but once, while in the immigration figures they appear twice or even more frequently. This fact is of more importance than is generally recognized. At the port of New York, where the great majority of the immigrants land, a record was made in 1896 of the number who had been previously in the United States; and, beginning with the

following year, the record was extended to the entire body of immigrants. During the period of observation, 1896-1900, 235,908 immigrants were recorded who had been in the United States before, or 15.9 per cent of all the cases observed. If the same proportion holds true for the entire decade, there were 586,223 immigrants who had been in the United States previously. This double counting therefore accounts for a large share of those whose whereabouts we are seeking to discover and leaves only about an equal number, 670,000, not yet accounted for.

This final remainder of somewhat over half a million persons may, I believe, be assigned to the class of temporary visitors who, after a longer or shorter stay in the United States, returned to the land of their birth within the decade 1891-1900. Popular phraseology designates this class of immigrants as birds of passage. That this class is large among recent immigrants is generally believed, but I am aware of no previous effort to measure even approximately its magnitude.

The significance of the return movement should not be overlooked. The cheap transportation which makes immigration easy facilitates the return of those who have failed to find their expectations realized, as well as of those who have amassed what they deem a competence which they take with them to enjoy in their native lands. We have no direct statistics of returning immigrants, but we have some interesting facts as to outgoing steerage passengers. The probabilities are that a very small fraction of such passengers are native born Americans. Our native citizens whose economic condition is such as to debar them from travel as cabin passengers have no motive or incentive to take them to Europe. If there is, however, a small contingent of native citizens among the outgoing steerage passengers, it is more than counterbalanced by the number of cabin passengers who originally came to this country as immigrants. The number of outgoing steerage passengers in the decade 1891-1900, exclusive of 1896 and 1897, for which no figures are available, was 1,229,909. Since 1895 showed 216,665 and 1898, 130,857, we are probably within the mark in estimating 300,000 for the two years, 1896 and 1897, or a total for the decade of 1,529,909. As the total number of immigrants for the decade was

3,844,420, we should have, after deducting these returns, a net immigration of 2,314,511. We have already estimated that the immigrants of 1891-1900 were represented in the population by approximately 2,160,000 persons, and that the probable number of deaths among immigrants was 268,015. It cannot escape attention how closely the sum of these figures resembles the net immigration just calculated.

If the foregoing analysis be correct, the immigrants of the decade 1891 to 1900 can be accounted for approximately as follows:

Temporary sojourners	670,000
Counted twice by immigration authorities	590,000
Died before the census of 1900	270,000
Made good losses by death among the older foreign born population	1,230,000
Absolute increase of foreign born population	930,000
Total immigration recorded, 1891-1900	3,690,000

In the light of the facts just considered we must ask: Does net immigration bear the same relation to gross immigration as formerly? It is clear that in estimating the force of the immigration movement we must take the gross figures with considerable allowance. General considerations, such as the greater ease and cheapness of transportation, make it seem highly probable that temporary sojourners and those who were counted twice were much less numerous in former years, so that the effective immigration represented by the figures was relatively larger then than now. Figures for a minute statistical analysis for earlier years are lacking, but the following table is suggestive:

CENSUS INTERVAL	INCREASE OF FOREIGN BORN	IMMIGRANTS	PROPORTION OF INCREASE OF FOREIGN BORN TO NUMBER OF IMMIGRANTS, PER CENT
1850 to 1860	1,894,095	2,598,214	72.9
1860 to 1870	1,428,522	2,314,824	61.7
1870 to 1880	1,112,714	2,812,191	39.5
1880 to 1890	2,628,161	5,246,613	50.0
1890 to 1900	1,151,981	3,687,564	31.2

It appears that the increase of foreign born population was a less percentage of the recorded immigration at the last census in-

of force, as being undesirable. Three months later, despite all that had been promised, and despite — or perhaps in consequence of — the complaisance shown by our government, the American demands were still unsatisfied; and, in a note to Tewfik Pasha, dated December 16, 1899, Mr. Straus writes: "Our interpreter was officially informed by the Sublime Porte [apropos of the Harput outrages] that his Majesty would not consent to the rebuilding, as the American missionaries were the cause of the Armenian troubles." And, in a dispatch to the American secretary of state, four days later, he says that

the belief, held to for some years, that our missionaries were at the bottom of the Armenian troubles, or at any rate indirectly connected with the unrest that brought about the troubles, has rendered my task an exceptionally difficult one. I have again and again argued the matter to disabuse the Sultan's mind of this belief; I have again and again cautioned the missionaries to guard against giving color to this suspicion; and I have perhaps not argued in vain, as the Sultan's secretary and the grand vizier have shifted their ground, and now say they do not claim the American-born missionaries are guilty of hostility, nor that our government would permit them to act in a spirit of hostility to Turkey, but that our missionaries have in their employ many Armenian teachers who plot against Turkey.

It was at this point in the negotiations that Mr. Straus left Constantinople; and at the end of the year 1900, he was still in America. In December, 1900, Mr. Griscom, *chargé d'affaires*, cabled a request that arrangements be made for the battleship "Kentucky" (then in Turkish waters) to remain a little longer, in order that any impression of hostility occasioned by its presence might be removed. The "Kentucky" having been ordered by the Navy Department to remain, Mr. Griscom wrote that on December 10 he had attended a dinner at Yildiz Palace, accompanied by Captain Chester of the "Kentucky" and his staff; that he presented these gentlemen to His Majesty in audience before the dinner, and that after it Captain Chester and he were received in a "long private audience." Mr. Griscom says that there was no mention, during this conversation, of the diplomatic affairs then pending between Turkey and the United States, except that

the early part of the century, that an increase in population would add only to the misery of mankind. Without asserting that our country can always absorb a large immigration, I think we may safely affirm that, considered in its mass only, the immigration of today is no menace to our welfare.

But it may be urged that any study of modern immigration which takes no notice of its character is incomplete, for the feeling is widespread that it is less desirable than formerly. It is well known that the centers of emigration are shifting from northern and western Europe to the southern and eastern areas. The facts may be epitomized in the proportion of the total immigration which is borne by the natives of Italy, Austria, Hungary, Poland¹ and Russia. It was:

1851-1860	. . .	0.4 per cent	1901	. . .	68.6 per cent
1871-1880	. . .	8.1 "	1902	. . .	70.5 "
1881-1890	. . .	19.4 "	1903	. . .	66.8 "
1891-1900	. . .	49.3 "			

In consequence of this rapid augmentation of these groups their share in the total foreign born population increased from 8.9 per cent in 1890 to 18.1 per cent in 1900. This proportion would doubtless be larger were it not for the fact that these nations probably contribute in larger measure to the excess of the immigration figures over the census figures previously analyzed than do the northern nations. While it is difficult to fix this point exactly, it is at least significant that, while 592,907 natives of Austria-Hungary are reported as arriving between 1891 and 1900, only 422,051 were enumerated among the foreign born in the latter year. The case of the Italians is quite as striking, since despite 651,899 arrivals in the previous decade, only 484,207 were found in the United States in 1900. In the case of Russia and Poland there is some confusion of nationality and race which cannot be unravelled. The immigration authorities have recognized the partition of Poland and have placed the Poles under the nations which actually rule them. The census authorities recog-

¹ In recent years arrivals from Poland have been classed with the countries to which they belong. The figures beginning with the decade 1891-1900 lack some Poles of German nationality who would have been included had the method of enumeration been uniform throughout.

nize the category Poland, though they distinguish between its Russian, Austrian and German divisions. There were in 1900 altogether 807,606 persons ascribed by the census to Russia and Poland, or 598,871 persons after omitting the Poles claiming Austrian or German citizenship. The immigration from Russia in the decade 1891-1900 was 505,291, but this does not include Russian Poles in the first three years. Estimating the number of these, the immigration from Russia was probably about 445,000 persons. This immigration consists practically of two races, Hebrews and Poles, for the Russians proper are few in number.

Some further indications as to races which contribute to what may be termed the temporary as distinguished from the permanent immigration can be found in measuring the extent of family immigration. This will be indicated roughly by the number of women and children included in it, as shown in the following table for the year 1903:

RACE	CONTRIBUTION TO TOTAL IMMIGRATION, PER CENT	PERCENTAGE AMONG IMMIGRANTS OF EACH RACE, OF	
		Females	Children under 14 Years
English, Welsh, and Scotch	4.2	38.7	15.5
Irish	4.1	54.4	5.2
German	8.4	39.2	18.8
Scandinavian	9.3	35.4	10.6
Italian	27.2	18.9	10.7
Polish	9.6	28.4	9.4
Croatian and Slovenian	3.8	11.2	3.4
Slovak	4.0	29.2	9.6
Hebrew	8.9	42.3	25.0
Total Immigration	28.5	12.0

N.B. These races comprise 79.5 per cent of the total immigration.

The low percentage of women and children among the races of Southern and Eastern Europe, except the Hebrews, is obvious at a glance. It indicates a great predominance of the adult male, either unattached or leaving his family ties behind him, in this newer immigration. This is a characteristic of "pioneer" immigration as well as of "temporary" immigration, and how far these persons represent the first arrivals of a long series from these particular regions and how far they represent temporary sojourners cannot be determined. But it is, I think, clear that the increase

in the purely temporary immigration has gone along hand in hand with the shifting of the emigration centers.

The temporary immigration is much to be deplored, since it introduces into the body politic a class of people not only alien in fact but determined to remain so, wholly indifferent to their adaptation to the conditions of life by which they find themselves surrounded. To put it in another form, we have here a class eager to profit by our standard of wages but unwilling to adopt our standard of expenditure. Just how far the standard of life is a result of wages and just how far it is a factor in determining them cannot be discussed at this point. That it is to some degree a factor in determining wages is generally conceded, and the introduction and maintenance of a lower standard must result in injury to the working classes when it embraces a number of persons large enough to be a factor in the labor market. Hence, there is little doubt that temporary immigration is undesirable, and so far as this element is concerned there can be no question that the newer immigration is less desirable than that of former years.

The problem of the permanent immigration is the probability of assimilation to the conditions, standards and ideals of American life. It rests, therefore, upon the willingness and capacity of the immigrant to adapt himself to new conditions. General evidence of this willingness and capacity can be stated only in the vaguest terms; and it is to be regretted that, so far as there are any statistical indications upon these points, they must of necessity embrace all the foreign born, as the census cannot distinguish between those who have settled in the United States as their home and those whose sojourn here is for a time only.

Much attention has been given to the aggregation of the foreign born in cities; and there is a tendency to find in this fact a symptom of the unwillingness of the immigrant to discard his foreign habits, and of a desire on his part to build up settlements of his own nationality, where he can, at least in some degree, continue his old life. The fact is uncontested;¹ but the inference is a forced explanation of a perfectly natural and comprehensible

¹ In the principal cities of the nation (the 161 cities having over 25,000 inhabitants) the foreign born constitute 26.1 per cent of the population, while in the remainder of the country they form but 9.4 per cent of the population.

tendency. Population follows the opportunities for employment, and these have the most attractive force for the more mobile elements. The fact of city growth cannot be ignored in connection with the tendency of the foreign born to the cities. Between 1890 and 1900 the increase of the population was thus distributed:

	NUMBER	PER CENT
Urban communities	7,642,817	58.3
Semi-urban communities	2,036,205	15.5
Rural	3,431,850	26.2
Total	13,110,872	100.0

Cities have in recent years offered more attractive labor opportunities than the rural regions, and people have streamed into them from the country districts as well as from foreign lands. That the foreign born element, being without local ties, should have contributed to the growth of cities in larger measure than the native-born citizens is perfectly natural. Of course it would be one-sided to overlook the consideration that immigrants flock to the cities because others of their own race are there. The contact with their own people is not wholly a matter of choice, it is a vital necessity upon their first entrance into a new world. They need interpreters and go-betweens in their relations with a people whose language is foreign to them. Of necessity they seek the people of their own race, and find employment either in the service of their fellow countrymen or through their agency.

Such herding together of the foreign born in cities gives rise to grave problems of municipal life, but it cannot be taken as an evidence of unwillingness of the foreign born to adapt themselves to new conditions. Is it an obstacle to such adaptation? It may seem strange to suggest the question, but if, with the inability of the immigrants to speak English and their lack of any connections which would aid them in securing employment, a general diffusion throughout the country is impossible, there must be either city colonies or rural colonies. The latter are less in the public eye than the former, but are they better schools for American citizenship? Is not the attrition of city life, with its more frequent contact with the native American, more likely to promote

a knowledge of the English language and with it the ability to participate in the general life of the community, than the self-centered existence of rural communities? In this connection it is at least suggestive that in 1900 the number of native white persons of foreign parentage who could not speak English was greater in Wisconsin (5,024) and in Minnesota (2,740) than in New York (2,498); and that 19,103 natives of native parentage, who could not speak English, were enumerated in Pennsylvania.

Among the scanty evidences bearing upon the willingness of the immigrant to adapt himself, we may consider the statistics of naturalization. In 1900 there were enumerated 1,001,595 aliens,¹ or 24.6 per cent of all the adult foreign born males who made returns on the subject of naturalization (14.9 per cent of all having failed to make any return). The following statement as to length of residence is significant:

LENGTH OF RESIDENCE	ALL FOREIGN BORN MALES	ALIENS. ¹ (ADULT MALES)
Less than five years	628,009	304,406
Five to nine years	756,967	254,511
Ten years and upward	3,963,759	431,437
Unknown	381,377	11,241
Total	5,730,112	1,001,595

This shows that the larger proportion of aliens is found among the more recent arrivals, and it might be anticipated that the aliens should be more numerous among the nationalities which characterize the modern immigration than among those which contributed more largely to the foreign born population in earlier years. Still, and despite the probability that the census of 1900 included a larger number of persons who had no intention of permanently remaining in the country than were included in prior enumerations, the influx of these newer elements shows as yet no appreciable influence upon the tendency towards naturalization. A comparison of the census of 1890 (the first which took note of naturalization) and that of 1900, gives the following percentages:

¹ The Census Reports designate as aliens all persons who have taken no steps towards naturalization. Persons who have taken out their first papers, but are not fully naturalized, are not classed as aliens.

FOREIGN BORN MALES OF VOTING AGE	1890	1900
Naturalized	58.5	56.8
First papers filed	5.4	8.3
Aliens	27.4	20.0
Unknown	8.7	14.9

While the unknown element is larger in 1900, the total of unknown and aliens is slightly less than 1890.

If we turn now to the other phase of the question, the capacity of the immigrant to adapt himself to new conditions, the outlook is hardly reassuring. On the average the immigrant is a man who has nothing to lose by expatriation. He stands on the lower levels of the society from which he springs, and brings to the new country only a scanty endowment of intellectual attainment or of industrial skill. The recent statistics of the Immigration Bureau—for our detailed information in regard to new arrivals dates only since 1891—may well give rise to apprehension.

As it is not the function of this paper to recite well known facts, but to bring out if possible certain aspects of the immigration question which have frequently been neglected, we need only note briefly the facts as to the illiteracy of the immigrants. An interesting chart accompanying the Immigration Report of 1903 shows the illiteracy of the immigrants over fourteen years of age to have been as follows:

1895 20 per cent	1900 24 per cent
1896 29 "	1901 28 "
1897 23 "	1902 29 "
1898 23 "	1903 25 "
1899 23 "	

Among the races which contributed largely to the immigration of 1903 we may note the following percentages of illiteracy:

Italians, southern 48 per cent	Italians, northern 13 per cent
Lithuanians 47 "	German 4 "
Croatian & Slovenians 35 "	Irish 4 "
Polish 30 "	Bohemian 2 "
Hebrew 25 "	English 2 "
Slovak 22 "	Scandinavian 0.3 "

It would naturally be supposed that the shifting of the bulk of immigration from the races with a low rate of illiteracy to those with a high rate, would affect materially the average illiteracy of the foreign white population of the United States. This is reported as follows:

1880 . . .	12.0	per cent of population over 10 years of age.
1890 . . .	13.1	" " " " " " " "
1900 . . .	12.9	" " " " " " " "

The difference in twenty years is inappreciable — a fact which we believe is largely due to the number of temporary immigrants among the races with a high rate of illiteracy. Whatever it may do in the future, the immigration of recent years has not as yet increased the proportion of persons destitute of the rudiments of an education. Nor is the ignorance of the parents perpetuated among the children. This is shown in the fact that the children of foreign parents utilize the school facilities of the country as fully as do those of native parents.

PERCENTAGE OF ILLITERACY IN	1890 NATIVE WHITE		1900 NATIVE WHITE	
	Native Parents	Foreign Parents	Native Parents	Foreign Parents
United States	7.5	2.2	5.7	1.6
North Atlantic States . .	2.4	2.1	1.7	1.5
North Central States . .	4.1	1.9	2.8	1.3

In the average of the United States, the greater illiteracy of the Southern states materially affects the average for the native white of native parentage, and we have accordingly cited separately the Northern regions where the two classes are found side by side. The advantage in favor of the children of foreign parents is doubtless fully explained by the superior school facilities of the cities where this class is most numerous. It will be noted that in all cases there is improvement between the census of 1890 and that of 1900.

It is moreover worthy of note that among the foreign born of ten to fourteen years of age the illiteracy is 5.6 per cent, while among those of 65 years of age and over it is 19.3 per cent.

This may be due in part to the fact that some of the foreign born children have enjoyed school facilities since their arrival, but it is also a reflex of the fact that the popular education in Europe is of recent date and that the fathers did not enjoy the opportunities of the children. This consideration is instructive in view of the fact that we know nothing of the illiteracy of the immigrants by actual count except in recent years. It points out the probability that the older immigrants may have been as ignorant as the new, and that illiterate immigration is not a new, but only a newly observed fact.

In connection with this discussion of the intellectual quality of the immigrants, we may properly note the census returns as to ability to speak English. It is reported that, in 1900, there were 217,280 foreign born persons in the United States over ten years of age, or 12 per cent of all, who could not speak English. Of course many of the foreign born spoke English as their mother tongue, 24.5 per cent being from the United Kingdom or English Canadians. Allowing for these persons, it appears that of the foreign born who had no English antecedents the proportion of those who had not acquired in some degree the ability to speak our language was 18.3 per cent. It is interesting to note that ten years earlier there were 15.5 per cent of the foreign born over ten years of age who could not speak English. Allowing again for those of English antecedents, we find 25 per cent of those without inherited knowledge of English who had not acquired it. The improvement between 1890 and 1900 may be in part due to the fact that in the former year, after a decade of heavy immigration, the proportion of recent arrivals among the foreign born enumerated was larger than in 1900. If this be true, we must state our conclusion cautiously to the effect that modern immigration has not as yet affected the rate of acquisition of the English language.

The capacity of the immigrant to adapt himself to new conditions may be examined also in the light of economic standards. Those who bring with them a certain degree of industrial efficiency, as evidenced by their occupations, may properly be looked upon as more promising than those who stand on the lowest scale of economic activity. The occupations of the immigrants landing in 1903 are thus stated:

Professional occupations	6,999
Skilled labor	124,683
Miscellaneous	525,663
No occupation, including women and children	199,701
	<u>857,046</u>

The professional class is inconsiderable. If we eliminate those having no occupation, we find that skilled labor represents only 19 per cent of those having occupations. The vast majority come under the head "miscellaneous," whose largest contingent is unskilled laborers, 320,642 persons. This single category makes up 48.8 per cent of all immigrants having occupations. It is needless to point out that this composition of the immigrants as respects occupations shows a general average of economic standards much lower than in the population at large, where laborers not specified constitute less than 10 per cent of all persons engaged in gainful occupations. The fact is patent to all and constitutes the most serious aspect of the immigration problem generally. It would, however, be a mistake to assume that the prevalence of a low economic standard is a result of the shifting of emigration centres and a consequence of recent developments. A similar grouping of occupations shows for the decade 1881-1890:

Professional occupations	27,006
Skilled labor	540,411
Miscellaneous	2,195,292
No occupation	2,483,904
	<u>5,246,613</u>

If we again disregard the persons having no occupation, we find that only 19.5 per cent of the remainder are represented by skilled labor, a proportion not sensibly higher than that found in 1903.

With somewhat less accuracy we may push the inquiry still further back into the past. The special report upon immigration issued by the Bureau of Statistics in 1872 gives the occupations of all passengers arriving in the United States from 1820 to 1870. The figures show 1,398,516 laborers, 4,801,537 with occupation not stated or without occupation, and 2,319,281 in other occupations, in a total of 8,518,334. But these figures relate to all passengers and not exclusively to immigrants, embracing 714,469 citizens of the United States. It may, I think,

be safely assumed that the citizens of the United States, returning to their own country had practically no representation in the class of laborers. If then, we deduct the citizens of the United States from the total arrivals and further eliminate the persons without occupation, we find that laborers not specified constitute 46.6 per cent of the remainder thus obtained. It would appear, therefore, that there has been no appreciable deterioration in the quality of immigration, judged from the standpoint of occupation. What it is to-day it always has been.

From the foregoing analysis it should, I think, be clear that the evidence of a declining average of intelligence and capacity which has been alleged to characterize recent immigration is just as inconclusive as that brought forward to show an increasing volume. However serious the problems of immigration, they are not new problems, nor are they more urgent to-day than before. To demonstrate this fact is not to answer the question whether restriction is or is not desirable. Such restriction may indeed have been desirable fifty years ago, or it may have become so since, not through any change in the volume or character of immigrants, but by reason of changes in the body politic. Into these larger questions it is not our purpose to enter. But it is, I trust, some slight contribution to this question to emphasize the fact that we are not dealing with new conditions.

Should the matter rest where it now stands, may we not hope that the doubts now expressed, whether the nation can successfully absorb the immigrants of to-day, will prove quite as unfounded as those which found expression some fifty years ago, when the first great influx of immigration occurred?

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THE CAPITALIZATION OF THE INTERNATIONAL MERCANTILE MARINE COMPANY.

THE International Mercantile Marine Company completed, on December 31, 1903, its first year of life as a going concern. Up to the date of this writing, if stock quotations are any indication of its financial condition, the success of the company, from a market standpoint, is problematical. Its preferred stock is quoted at 18 and its common stock at 5, prices which indicate a general conviction that the equity in the company is worth little.

There is, however, a possibility that the stock market may be mistaken in its estimate of Mercantile Marine. In a declining market, stock values are influenced more strongly by the financial necessities of holders than by the earning power of the companies whose ownership they represent. This is especially true of the stocks of corporations launched on a declining market where the influence of every adverse factor is exaggerated. International Mercantile Marine has, in this respect, been peculiarly unfortunate. It was brought out during the fall of 1902, when the decline in the market was in full swing, and after the public buying power had been exhausted. Under the circumstances, these securities had no chance of a favorable reception. Moreover, almost from the start they were subject to inside pressure. The English vendors, stimulated by some natural distrust of the unknown economies of combination, and strenuously exhorted thereto by the financial press of Great Britain, which has been from the outset hostile to the combination,¹ sold the stock which

¹ For example, the *Economist*, on November 29, 1902, referring to the report that certain English vendors had expressed a desire to receive bonds in lieu of cash, remarked as follows: "They (J. S. Morgan and Co.) also state that the offer was made on the expressed desire of some shareholders, who wished to invest in the bonds. If that be the case, it seems to imply a singular lack of busi-

they received in payment for their interest, and the members of the American underwriting syndicate, as well as the American vendors, hard pressed by the continued stringency in the money market, have contributed to the selling pressure.

The proposition should be considered on its merits, without special reference to the market price of the company's securities.

The outstanding capital of the Mercantile Marine Company is divided as follows:

Underlying bonds	\$16,000,000
20-year collateral debenture bonds (4½ per cent)	52,000,000
Preferred stock, cumulative (6 per cent)	54,600,000
Common stock	48,000,000
Total	<u>\$170,600,000</u>

To pay interest and preferred dividends — common dividends, at least for some years to come, are hardly to be expected — will require the following amounts:

Interest on underlying bonds, taken at 5 per cent	\$ 800,000
Interest on debentures	2,340,000
Dividends on preferred stock	<u>3,276,000</u>
Total	<u>\$6,416,000</u>

Following the practice of the older German and English companies and allowing 60 per cent of net earnings for depreciation, insurance and renewals, the total requirements, letting these funds include the sinking fund, are \$16,000,000.¹

ness capacity on the part of the vendor shareholders, since they need not seek far to find securities with a much greater margin of security than these bonds to return a higher rate of interest. All they do know is that its capitalization will be enormously in excess of that of the undertakings that have been absorbed in it, and none should be better aware than themselves of the difficulty that will be met with in earning dividends on such a large sum, since they have had the experience of the same difficulty with a much smaller capitalization."

¹ The bonds of the International Navigation Company, of which \$13,686,000 are outstanding, call for a sinking fund of \$250,000 to \$500,000 annually, beginning May 1, 1905, which will retire the bonds at maturity in 1929. No sinking fund is provided for the bonds of the International Mercantile Marine Company, but they are subject to call at 105 after five years. If an adequate reserve is provided, the necessity of a sinking fund on bonds secured by shipping property does not appear.

Shortly after the Mercantile Marine Company was organized, the statement was made, unofficially, but apparently on good authority, by the *Wall Street Journal*, that the average net earnings of the different fleets for four years were \$6,107,675. The same authority stated that the estimated savings in the cost of operation for the year were \$10,000,000. Adding these to the average profits above mentioned, the earnings of 1903 should have amounted to a sum sufficient to pay dividends on the preferred stock, although it was not expected that any disbursement would be made. In other words, accepting the corporation's own estimate of the economies which can be secured by its changes in administration, the amount of its earnings falls short of the amount necessary to pay dividends on the common stock.

Before proceeding further in the analysis, let us test the accuracy of this conjectural estimate by comparing these figures with the amount actually earned by other companies during 1902, a year which was more favorable for the shipping industry than 1903. Such a comparison is presented in the following table:

	TONNAGE	NET EARNINGS	NET EARNINGS PER TON
Cunard Company	114,410	\$ 1,235,750	10.80
North German Lloyd	583,042	4,392,500	7.53
Hamburg-American	651,151	4,458,198	6.85
International Mercantile Marine	1,034,884	16,107,000 (est.)	15.57

It thus appears that the estimated tonnage earnings of the Shipping Trust for 1903 are nearly twice the average amount — \$8.39 — which was earned during the preceding year by its leading competitors. Moreover, the German companies have for many years operated under a close pool which secures them all of the economies which the Shipping Trust was organized to obtain. Unless some other factors shall be discovered by the combination to increase its earnings, these preliminary estimates will eventually require some revision.

Accepting the same figure of tonnage earnings for the Shipping Trust which was attained in 1902 by its competitors, namely \$8.39 per ton, we have next to inquire how the combination measures up to its interest and dividend requirements.

The net earnings of the company, on this basis, would stand at \$8,941,398, leaving \$5,801,398 over fixed charges, for depreciation, renewals, and replacements. This amounts to about \$5.60 per ton as compared with \$4.30 per ton for the Hamburg-American Line in 1902, \$6.19 for the North German Lloyd, and \$8.04 for the Cunard Line. If we debit the earnings of the International Mercantile Company with \$5.00 per ton for these various necessary expenses, an amount which, considering the age of their fleet and the necessity of providing for the redemption of their bonds, would seem to be no more than is required, and if we assume, as before, their tonnage earnings at \$8.39 per ton, the Trust has only \$606,978 remaining for its preferred stockholders. That this supposition is not wide of the truth, may be seen from the experience of the North German Lloyd Company in 1902, which earned, over interest, 14,770,000 marks, and credited to renewals and insurance all but 212,477 marks of this amount, reducing their dividend payments from 5,278,131 to 210,623 marks. Taking a three years' average of the earnings of the Cunard, Hamburg-American, and North German Lloyd Companies, we find that their combined depreciation and insurance charges amount to \$24,719,112 out of \$37,976,794 of net earnings, or about 65 per cent. It is impossible to escape the conclusion that the Shipping Trust must appropriate a similar proportion of its profits for the service of the company, if the first care of its management is for the property of the company. If this is done, however, a readjustment of the capital of the company is among the probabilities.

We have not reached the end of the chapter. The Shipping Trust was organized during a period of great prosperity, when the earnings of ocean transportation, although depressed somewhat below the abnormal figures of 1900, were still large. To pass final judgment upon its financial future, it is necessary that we cast backward and discover, if possible, from the history of other shipping companies, what may be expected if earnings follow the course of former years.

In the accompanying table appears the income account of the Cunard Company for a period of twenty years, including 1883 and 1902.

CUNARD STEAMSHIP LINE.

	PROFITS, INCLUDING BALANCE FORWARD	RESERVED FOR DEPRECIATION	RESERVED FOR IN- SURANCE	TOTAL BALANCE	DIVIDENDS	FOR- WARD	IN- SURANCE FUND STANDS AT
	£	£	£	£	£	£	£, Often Written lb.
1902	263,617	158,722	24,686	68,808	64,000 (4%)	4,807	357,000
1901	226,022	167,900	5,766	65,984	64,000 (4%)	1,984	350,000
1900	553,241	284,488	119,037	143,434	128,000 (8%)	15,434	350,000
1899	294,856	173,223	34,247	83,527	80,000 (5%)	3,527	260,000
1898	261,691	172,169	29,496	57,663	56,000 (3½%)	1,663	235,000
1897	222,475	166,938	27,999	41,691	40,000 (2½%)	1,691	212,000
1896	249,788	184,822	32,417	42,181	40,000 (2½%)	2,181	202,000
1895	144,305	180,325	. . .	183,731 ¹	. . .	deb. int. 1,466	187,000
1894	94,953	177,104	. . .	183,020 ²	. . .	2,072	230,000
1893	200,091	154,419	39,966	35,868 ³	32,000 (2%)	3,868	322,000
1892	174,607	125,856	33,496	36,296 ⁴	32,000 (2%)	4,296	317,500
1891	220,991	125,426	38,407	52,382	48,000 (3%)	4,382	315,000
1890 ⁵	246,601	125,840	43,144	72,838	64,000 (4%)	8,838	280,000
1889	350,203	130,573	{ 41,918 54,480 }	175,469	96,000 (6%)	4,988	240,000
1888 ⁶	314,736	{ 135,327 23,000 }	{ 46,815 40,472 }	130,172	64,000 (4%)	2,700	. . .
1887	254,482	135,500	77,839	41,143	40,000 (2½%)	1,143	{ Debenture debt re- duced from £150,000 to £90,000
1886	160,910	137,721	23,189	nothing left	nothing left	. . .	{ Loss of Oregon costs £113,241
1885	165,943	141,506	24,437	nothing left	nothing left	. . .	140,000
1884 ⁷	103,948	{ 87,018 23,000 }	nothing left	nothing left	117,000
1883	146,920	93,134 ⁸	50,094	. . .	none	1,270	150,094

¹ £39,426 from insurance fund.² £88,067 from insurance fund.³ £30,000 from insurance fund.⁴ £25,000 from insurance fund.⁵ The company had on hand at the end of 1890 in investments, bills, and cash, £559,922.⁶ £96,000 debentures paid off July 1st. Balance of cash and investments, £205,804.⁷ £23,000 taken from insurance fund and added to sum reserved for depreciation.⁸ Depreciation fund stands at £302,000.

The feature of the movement which will immediately impress the reader is the extraordinary fluctuations of net earnings. From a minimum of £103,948 in 1884, they rose to a maximum of £350,203 in 1889, an increase of 237 per cent. From that point, although fairly maintained until 1893, they fell in 1894 to £94,953, the smallest figure ever reached. The depression continued during 1895, but in 1896 began the great upward swing which carried earnings up more than 550 per cent, to the enormous total of £553,241 in 1900. From this maximum, the decline was rapid, profits standing at £226,022 in 1901, and £263,617 in 1902. Passing over, for the time being, the explanation of these remarkable fluctuations, let us examine the disposition of profits which this company employed. We note at once that the reserves for depreciation took up a large share: £3,104,011 out of a total of £4,650,380. Another large amount, £787,905, or 16½ per cent of the total, went to the insurance fund, which the company has always maintained at a high figure. Out of the surplus remaining, to which was added £182,493 from the insurance fund, bringing the total amount available for distribution up to £940,957, £848,000 was paid in dividends, leaving £93,957 to be carried forward, an amount successively included in the annual profits. In other words, out of £4,650,380 of profits earned in 20 years, the Cunard Company paid out £848,000, or 18.8 per cent to its owners, and kept 81.2 per cent in the business. We note, moreover, that the disbursement of dividends was by no means regular. In six years out of the twenty, nothing was paid on the stock. In five other years, less than 3 per cent was paid, and in only one year, 1900, was as much as 8 per cent distributed to stockholders.

We note also with what extreme care the directors guarded their insurance and depreciation funds, taking every occasion of large earnings to build up these safety deposits, and refusing to sacrifice to the temporary advantage of the owners the permanent welfare of the company. In thirteen years out of the twenty, the profits of the company exceeded £200,000, aggregating £3,658,794. Of this amount only £816,000 was paid in dividends, £2,842,794 being carried to reserve. The shareholders reaped no small benefits, however, from their enforced self-denial. In

four years of the period 1892-95, the insurance fund, which is held in cash and securities, was drawn upon for dividends or to maintain the depreciation fund. Of the £64,000 paid out to stockholders during these four years, £55,000 came from the reserves.

In short, it was only by the most careful economy, by the utmost prudence and conservatism in the distribution of profits, that the Cunard Company was able, over a twenty-year period, to average 2.6 per cent to its stockholders and, during the past ten years, to earn 3.1 per cent on a capital which at no time exceeded the book value of its ships.

For an explanation of the irregularity of these profits, we turn to the nature of the industry. The shipping business is, of all industries, the most irregular. It is liable not merely to the usual alternations of prosperity and depression, but to sudden fluctuations of rates and traffic which are entirely without parallel in any other branch of trade.

To begin with, the industry is strictly competitive. The high seas can never be monopolized. Dockage facilities in the leading countries are open to the ships of all the world, and shipyards will furnish a cargo steamer at a moderate price. Under these conditions, a permanent control of the shipping industry, sufficient to maintain rates or to control traffic, is out of the question. Agreements among the regular lines may introduce a certain degree of stability into passenger rates, and into the freight charges on the higher classes of commodities, but for the great mass of traffic, the raw materials and rough and half-finished products of commerce, carriers and shippers will continue, as they have from time immemorial, to make their individual bargains, and the rates of charge will continue to be fixed by the higgling of the market.

This situation has two consequences. If at any port the supply of shipping waiting for cargoes exceeds the amount of business offered, the competition between owners will force rates down sometimes to the smallest admissible margin above operating expenses. The amount asked by the marginal ship will fix the rate for the time being for all vessels leaving the port. On the other hand, a small excess of tonnage offered will have an equal

effect in raising the rate. Some classes of commodities can be delayed in shipment longer than others, and some vessel owners can afford to lay up a portion of their tonnage rather than accept unremunerative rates. Generally speaking, however, the rule holds good. From every port and on every line of traffic, the rates are constantly changing in a way which would stagger a railway traffic manager, although he was deeply versed in the theory and practice of rebates and special concessions.

For example, take the following table of outward rates on coal from Wales to various ports in 1899:

	s. d.		s. d.	PER CENT OF VARIATION
Port Said	7 9	to	13 6	74
Genoa	7 6	"	11	47
Aden	11 6	"	16 6	43
Bombay	12	"	18 6	54
Colombo	12	"	19	59
Cape Town	19	"	30	58
Rio Janeiro	11 6	"	16	39

The movement of grain rates from the United States, while less irregular than the figures quoted above, is also subject to wide variations.

Examples of more extreme fluctuations are easy to find. The course of rates in the British market in 1896 offers a typical illustration of the extreme instability of ocean rates. The *Economist*, in its annual review of the shipping industry for 1895, reported, at the close of that year: "The tonnage afloat is enormously in excess of the world's requirements, and so long as this continues we cannot see that there will be an improvement." During the early part of 1896, this condition of extreme depression continued. Only in outbound rates to the East, where the China-Japan troubles made a brisk demand for shipping, was any profit presented. These rates advanced, and remained on a high level throughout the year. A large number of ships, finding no profitable employment at home, went out to the East. Once there, however, and the war ended, they could not get back again, for return freights were not to be had, and it was impossible to return such a long distance in ballast without the pros-

pect of remunerative employment. This situation left a large number of cargo vessels stranded in eastern ports, unable to get back to western waters. A large part of the world's carrying trade was thus locked up. The available supply of shipping was suddenly diminished. The tonnage afloat accessible to English shippers was no longer as in 1895, "enormously in excess of the world's requirements."

Upon a straitened supply was now precipitated an avalanche of orders. Says the *Economist* :

The corn trade in the past year assumed a novel and unexpected position; the production of the world was slightly short of the consumptive requirements, . . . two of the large producing and exporting countries (India and Australia) being actually converted into considerable importers, and several hitherto small importers making largely increased demands.

The general trade of the country, as the *Economist* notes, maintained the improvement and expansion awakened and started more than twelve months earlier.

These combined influences came to bear on the freight market almost simultaneously; shippers of nearly every description, all wanting the same thing at the same moment, with a rather short supply of the article; result, blind competition sending up the price of tonnage by leaps and bounds, in many cases 200 to 300 per cent, from the end of September to the end of November. . . . By so much as the rise was rapid, by so much was the decline equally rapid, and at the close of the year we find freights all around, in every trade, worse if anything than at the commencement.¹

This experience has been repeatedly duplicated in every market. It is true that the total supply of ocean shipping will in time become available to relieve any congestion ; but much time must often elapse before relief can be extended, the tonnage must be moved at once, and the ship-owners who are fortunate in being on the spot reap a rich harvest. On the other hand, vessels which have gone out in ballast to Argentine or the United States, expecting full cargoes of grain, or which have made the long

¹ Commercial History and Review of 1896. *Economist*, vol. lv, supplement, p. 25.

voyage to Australia, expecting a large movement of wool, suffer the full effects of a crop failure or a small wool clip.

The following table shows the fluctuations over a ten-year period in four of the leading items in the world's export trade.

YEAR	EXPORT OF WHEAT FROM U. S. Bushels	PER CENT OF CHANGE FROM PREVIOUS YEAR	EXPORT OF COTTON FROM U. S. Bales	PER CENT OF CHANGE FROM PREVIOUS YEAR	EXPORT OF CORN FROM U. S. Bushels	PER CENT OF CHANGE FROM PREVIOUS YEAR	EXPORT OF WHEAT FROM RUSSIA Thousand cwt.	PER CENT OF CHANGE FROM PREVIOUS YEAR
1892	225,665,812		5,858,000		76,602,285		26,297	
1893	191,912,635	-15	4,390,000	-27	47,121,894	-39	50,351	+91
1894	164,283,129	-14	5,232,000	+19	66,489,529	+48	65,966	+31
1895	144,812,718	-12	6,726,000	+29	28,585,405	-57	76,453	+16
1896	126,443,968	-12	4,627,000	-31	101,100,375	+243	70,774	-6
1897	145,124,972	+15	5,979,000	+29	178,817,417	+77	68,670	-2
1898	217,306,004	+49	7,540,000	+26	212,055,543	+19	57,047	-15
1899	222,618,420	+2	7,313,000	-3	177,255,046	-17	34,466	-40
1900	186,096,762	-17	5,946,000	-19	213,123,412	+20	37,627	+9
1901	215,990,073	+15	6,538,000	+9	181,403,473	-20	44,626	+19

Many of these fluctuations took the shipping trade by surprise, and either too few or too many boats were available. In other cases, the supply of shipping the world over was either excessive or redundant, and freights fell or rose to correspond.

So much for the temporary fluctuations of ocean freight rates and tonnage. There are also movements of longer duration, corresponding to the ebb and flow of general business, but subject in peculiar measure to the influence of special forces. From 1893 to 1897, for example, the leading commercial countries were suffering from a commercial depression which caused a general decrease in the tonnage of international trade, and a still greater fall in the value of exports and imports. The effect of this situation upon the shipping industry has been already indicated. Tonnage could not be decreased, and, in fact, the tonnage of the world during these three years increased. The result was an unprecedented depression in the shipping industry. In 1893, the *Economist's* review reports a large number of steamers laid up and a number disposed of at forced sale. In 1894, the report was "low, unprofitable freights and declining values of property

engaged; the whole of the enormous trade has brought little or no profit, and a very bare margin over working expenses, far from enough to cover depreciation." In 1895, came a year "which will not readily be forgotten by the ship owners. . . . Our anticipations have been to the full realized; and probably a worse year than the present has not been experienced by the very oldest in the business."¹ The condition of the trade, in 1896, as already remarked, was little better.

During the four succeeding years, the situation was entirely changed. The widespread industrial revival caused a large increase in the value of foreign trade; and the shipping trade, as illustrated by the rapid and extraordinary rise in the profits of the Cunard Company, became very profitable.² The main support of the market, during 1897 and 1898, was the American export trade, which was characterized in the *Economist's* annual review of 1897 as follows:

It contributed largely toward sustaining rates in the early months, and causing a material advance during the autumn and late summer in all other rates by the ready absorption and continued demand for tonnage of all descriptions from the leviathan 8,000 to 20,000-ton cargo boats, to small fruit steamers.³

In 1899 the advance continued. General trade, the world over, was active, and the South African War resulted in the largest withdrawal of shipping that had been known for more than a generation. An outbreak of hostilities, involving even a second-rate power, always demands the services of a large amount of shipping. Even the effect of the Greco-Turkish War was sensibly felt; the influence of the China-Japanese War has been already mentioned; and the Spanish-American War materially contributed to the prosperity of the trade in 1898. The shipping industry can, over a period of years, depend with reasonable

¹ *Economist*, vol. liv, supplement, p. 26.

² The combined exports and imports of the United States, Germany and Great Britain, in 1895 were valued at \$6,323,207,441. In 1901, six years later, their value had risen to \$8,635,362,581. A large portion of this increase was undoubtedly due to the rise of prices, but the gain in tonnage was chiefly responsible.

³ *Economist*, vol. lvi, supplement, p. 24.

certainty upon the assistance of several wars. If international disturbances occur during a period of depression, the freight and traffic situation is relieved, and if, as in the case of the Boer War, the outbreak of hostilities comes hard upon the heels of general and abounding prosperity, the result is enormous profits for all ship-owners. Not only does war increase the demand for ships, usually on terms highly favorable to the owners, but it raises the level of freight the world over by reducing the supply of tonnage.

These results followed from the South African conflict. At the close of 1900, the British Government had withdrawn some 2,000,000 tons of shipping, an amount nearly equal to the total steam tonnage of Germany, and nearly double that of France. In 1900, moreover, the troubles in China required the transportation of large numbers of troops to the East, and throughout the Boer War, a large coal tonnage was kept moving to the Cape. The result, as stated in the *Economist's* annual review, was that

The tonnage taken on time charter for all trades during the past year has been unprecedented. The rates paid by our Government for transports were 20 s. per gross register per month, and in some cases more. Many charters in ordinary trades were made for long periods at very remunerative rates. Modern boats have commanded from 7 s. to 11 s. 6 d. per gross ton, according to the trade and length of charter.¹

In 1901, however, the tide turned. During the preceding four years, the supply of tonnage had been increased 4,049,260 tons, and with the close of the war, the British government rapidly released the ships which it had employed. To make matters worse, the American corn crop was a failure, and the industrial depression on the continent reduced the amount of freight movement. Rates fell 30 per cent throughout the year, and have continued to fall during 1902 and 1903, the close of 1903 finding the trade extremely depressed, with little prospect of early improvement.

We find in this hasty review of the recent history of the shipping trade an explanation of the irregularity of the profits of the Cunard Company, and can understand why the directors have

¹ *Economist*, vol. lx, supplement, p. 28.

pursued such a niggardly policy in the disbursement of profits. The management of a shipping company lives in constant apprehension. Exposed to increasing competition on every hand ; compelled every year to build new and larger boats to keep pace with their rivals; anxiously scanning the commercial horizon for signs of business depression, crop failures, famines or labor disturbances; hoping and scheming for a few crumbs of subsidy, to introduce a modicum of fixed income into their earnings; engaged in a business as shifting and unstable as the sea on which that business is conducted—is it any wonder that the experienced ship-owners hold fast to their profits and regard the results of a year like 1900 as a gift of Providence to be guarded with zealous care?

Into this peculiar business came the promoters of the International Mercantile Marine Company. Attempting to apply to the shipping industry, the same principles of consolidation and capitalization which had been superficially successful on land, they imposed upon the new corporation an unusually heavy burden of capitalization, and they so arranged the capitalization as to make conservative financial management of the new company very difficult. The purchase price of most of the subsidiary companies was based on the profits of 1900. In the vendors' agreement between the syndicate and the White Star Line, for example, it was stated that

the valuation of the said shares hereunder and under said principal contract shall, subject as hereafter provided, be a sum equal to ten times the net profits of the company of the year 1900, subject to the following exceptions . . . (a) a sum for depreciation equal to 6 per cent on the amounts at which the property of the company stood on its books on the first day of January, 1900, and a sum for insurance . . . equal to £3 10s. on the same amount . . .¹

It was further stipulated that the earnings of steamships employed by the British government should "be credited . . . with net earnings of the same amount as were earned or would be

¹ For the text of these vendors' agreements, see Report of the U. S. Commissioner of Navigation, 1902, Appendix T, pp. 380 *et seq.*

earned by similar steamships of the company for the same periods in their ordinary trades."

The year 1900, as has been shown, was one of abnormal profits. The Cunard Company nearly doubled its net earnings, and it is reasonable to suppose that other companies were equally fortunate. A partial record of the prosperity of this year is furnished by the record of dividends. The average dividend of twenty-five leading companies in 1896 was 6 per cent; in 1898, 7.7 per cent; and in 1900, 9.4 per cent. In the extract from the vendors' agreement quoted above, we find a recognition of the fact that the profits of 1900 were exceptional, *viz.*, the provision reducing the earnings of ships employed in the government service to the general average of private employment. This reservation, however, does not go far enough. The mere fact of a large government employment, as has been shown, was sufficient to heavily increase the earnings of ships in private employment, and in capitalizing the earnings of this single year, the promoters of the Shipping Trust made a serious mistake.

Indeed, so apparent was the mistake, and so clearly did the trade foresee that reaction was impending, that this fact was openly urged upon the shareholders by the Leyland Line as an inducement to fall in with Mr. Morgan's plans. Said Mr. Ellerman, in May, 1901, at the shareholders' meeting of Frederick Leyland and Company :

The outlook for freights in the near future is, in my judgment, an uncertain one. We have had prosperous times, and I feel that the near future may bring, at all events for a time, a reflux of bad times, particularly when the tonnage which is usually employed in the North Atlantic trade, but which is now employed in government transport work, returns to normal employment; in addition to which a large amount of tonnage is building in America for employment in the Atlantic trade . . .¹

Not only was the amount of capitalization excessive, but what was more important, the arrangement of the capital of the Shipping Trust, taken in connection with the amount of the different issues, was open to serious criticism. In addition to an amount

¹ Report of Commissioner of Navigation, 1901, p. 321.

of bonds fully sufficient to absorb the maximum earnings of the company, a liability of \$54,600,000 of cumulative preferred stock was assumed, all of whose passed dividends must be paid before the common stock receives anything. Our previous discussion has shown the shipping business to be so irregular that even with the most moderate capitalization, in some years dividends must be passed, and in other years paid out of reserve. At all times, the directors should have a free hand in determining whether profits shall be distributed to stockholders, used for replacements and depreciation, invested in securities, or held in cash. The irregularity of the business is so great, that a free disposition of profits to stockholders is out of the question. The policy of a well managed shipping company is dominated by the necessity of reserving from two-thirds to three-fourths of the profits in order that one-fourth may be paid out in dividends. In view of this fact, the absolute amount of the Shipping Trust's capitalization is of much less consequence than the nature of the liabilities which it includes. The fact that the company is excessively capitalized is of less consequence than the fact that the arrangement of this capitalization is such as to make prudent financial administration very unpopular with stockholders. In this arrangement, fixed charges and obligatory payments predominate. Of the \$170,600,000 of capital, \$122,600,000 consist of bonds and cumulative preferred stock. If the debenture interest is passed, while the form of the bonds puts foreclosure proceedings out of the question, the unpaid interest must be discharged before anything is paid on the preferred stock; and if the preferred stockholder is forced to await the convenience of the corporation, the hope of the common stockholder of receiving anything on his investment becomes remote. In other words, a conservative administration of the finances of the shipping consolidation involves a series of postponements, an accumulation of deferred claims. The collection of a reserve sufficient to pay dividends in years of depression, if we may judge from the experience of other companies capitalized on a basis similar to that of International Mercantile Marine, is likely to be seriously interfered with by the importunities of deferred claimants.

It would be going too far to say that the International Mer-

cantile Marine Company is a failure. Its future lies in the hands of the stockholders. If they will sanction a policy of conservatism in the distribution of earnings there is no reason to suppose that the preferred stock of the company may not eventually be raised to the rank of an investment. The unfortunate experience of the corporation up to the present time, however, emphasizes the fact that it is necessary, in arranging the capitalization of a new company, to take into careful account the conditions of the business in which the new concern is to operate, and in every case to assume that industrial history is to be repeated. The "economies of combination" are no doubt considerable, but they are too problematical to be safely included in an estimate of earnings available for distribution to stockholders.

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THE MINIMUM SACRIFICE THEORY OF TAXATION.

IF taxes were voluntary contributions for the support of the state, it would be important that we should recognize some principle by which to determine how much each individual ought to give. Since the payment of such a tax and its amount would be matters for the individual conscience, it would be pertinent to ask what principle of obligation the individual ought to adopt as his rule of action. But since taxes are not voluntary contributions but forced payments, we need not so much to know what the duty of the individual is as what the duty of the state is: not how much the individual ought in conscience to give, but how much the state ought in justice to take from him, and under what conditions the state ought to take it. In the matter of taxation the state alone is the voluntary agent, and consequently the duty of the state alone is to be determined. It is one thing to say that the individual ought to contribute to the support of the state in proportion to the benefit which he receives, or to his ability to pay, or to his faculty, but it is quite another thing to say that the state ought to make him do any of these things.

These two questions, though distinct, may be resolved into one by assuming that it is the duty of the state to make its citizens do whatever they ought in conscience to do. It would still be the duty of the state which would have to be determined, but under such an assumption that duty would be clear whenever we had found out how the individual ought to act. Such was the assumption upon which states acted in an earlier and darker age, but it has generally been abandoned except in discussions of the basis of taxation, and it is time that it was abandoned even here.

It is doubtless true *in some cases* that the state ought to make the individual do whatever his duty requires, as in the payment of a debt or the keeping of a contract, but there are many other cases where the duty of the state has to be determined on other grounds. It may be that each citizen ought to contribute to the support of the church "according as the Lord hath prospered

him," but none of the more advanced nations would think of trying to compel him to do so. It may be the duty of each laborer to join a union, but no state ought to force him into one, much less ought the union to be allowed to appropriate that prerogative of sovereignty to itself. It may be, and very likely is, the duty of each individual "to produce according to his ability and consume according to his needs," but no one but a Marxian socialist would claim that the state ought to make him do so. The illustrations might be multiplied, but enough has been said to show that there are no *a priori* reasons for assuming that because the individual ought to pay for the support of the state according to his ability, for example, that it is therefore the state's duty to make him do so.

It is not to be inferred that the question of taxation is entirely divorced from ethics. Neither is it to be inferred that there are two kinds of moral obligations, one for the individual and the other for the state, nor that the ultimate test of right action is not the same for the one as for the other. A very distinct ethical problem is involved in the question of the apportionment of taxes: *viz.*, what is the duty of the state in the matter? Moreover, there is only one kind of moral obligation, and the same test of right action, whatever that test may be, must be applied in determining the duties of both the individual and the state. But even when a general principle of obligation has been agreed upon, no one is in a position to decide upon the specific duty of either the individual or the state until he knows what would be the general consequences of their various possible acts. Recognizing that each act is, for his purposes, the first link in a chain of causation, he must be able to trace that chain from its initial act to its general results before he can tell whether or not the act in question conforms to his general principle. As applied to taxation, for example, he must know how the effort to collect a certain tax will affect industries and morals and other social interests before he can say whether the state, in levying the tax, would be acting in harmony with the general principle of obligation agreed upon. If, to be more specific, he should find that the attempt to collect a certain tax would discourage certain desirable industries and commendable enterprises, that would be at least a partial reason for con-

demning it. That is to say, if the industry which is suppressed meets the test of the ethical principle, the tax which suppresses that industry cannot possibly meet the same test.

The question of the general principle of obligation lies so far outside the field of economics that one may be justified in borrowing such a principle ready made from the moral philosophers. Let us therefore accept, for purposes of this discussion, the principle of utility, and assume that the state, as well as the individual, ought to promote the general welfare — or the greatest good to the greatest number. How can the state promote the general welfare in the matter of taxation? In discussing the duty of the state the present writer cherishes no illusions as to the nature of the state. Realizing that the state is merely an abstraction, a convenient name for certain forms of joint action on the part of a multitude of individuals, and that the state can have no duties separate and apart from those of the individuals who compose it, yet the duty of the individual in imposing his will upon other individuals through legislation is so distinct from his duty in other matters that it is much more convenient, and fully as accurate, to speak of the former class of duties as if they belonged to the state itself.

The question of the duty of the state in matters of taxation is, of course, to be kept distinct from the question of its duty in the expenditure of revenue after it is raised. By the expenditure of a given revenue the state may, in various ways, add positively to the general welfare. But it may not be so obvious how the state can, in merely collecting revenue, promote the general welfare. There are certain ways of collecting revenue which are generally believed, and no doubt correctly, to positively promote well being. When, for example, a tax or a license suppresses or holds in check an industry which is regarded as more or less deleterious, such a tax or license meets the utilitarian test, and is justified only because it meets that test. Writers on taxation generally, even those who uphold the benefit theory or the faculty theory, accept this as a justification, even though it does not conform to their special canon of justice. But if the general utilitarian principle, or the general welfare argument, can, in this special case, override their special canon, why may it not in other cases as well?

It is at least an admission that the general utilitarian test is a more fundamental test than that of their special canon. If so, the more fundamental test ought to be applied in all cases.

While, as already suggested, there are certain taxes whose collection adds to the public welfare by suppressing undesirable industries, yet, generally speaking, the collection of a tax is in itself an evil. It is the cost which we have to undergo for the advantages which may be secured by means of the revenue after it is collected. Since a tax is, speaking thus generally, an evil, a burden, a sacrifice imposed, it is obvious that the utilitarian principle requires that that evil, that burden, that sacrifice, shall be as small as possible in proportion to the revenue secured. When the taxes are so levied and collected as to impose the minimum of sacrifice, and the revenue so expended as to confer the maximum of advantage, or when the surplus of advantage over sacrifice, of good over evil, is at its maximum, the state has fulfilled its obligation completely: it has met the utilitarian test.

If it is once admitted that the state's obligation in the matter of taxation is to be determined on the basis of a broad principle of public utility, then it is apparent that the argument in favor of either the benefit theory or the faculty theory must be reconstructed. Instead of basing the argument upon the duty of the individual, as is usually done,¹ the upholder of either of these theories must show that if the state should apportion taxes according to benefits received, in the one case, or according to ability to contribute, in the other, such apportionment would impose the least burden, all things considered. This is possibly the subconscious basis of the arguments of those writers who have championed either of these theories, but it does not seem to have been explicitly recognized by any of them. The champion of the faculty theory, for example, may conceivably have reasoned somewhat as follows:

Major Premise. The burdens of taxation ought to be so distributed as to involve the least possible sacrifice on the part of the community as a whole.

¹ If such is not the argument, then the leading exponents of these theories are at least guilty of inaccurately expressing their views.

Minor Premise. When each individual contributes in proportion to his ability, the whole burden of taxation is most easily borne — *i.e.*, with the minimum of sacrifice.

Conclusion. It is the individual's duty so to contribute.

Granting the premises, the conclusion follows as a matter of course, so far as the individual's duty is concerned; but, as we shall see later, the minor premise is not sound, and, as we have already seen, the conclusion is not conclusive so far as the duty of the state is concerned. For, whatever might be true if all men were willing to contribute according to their ability, the fact is that they are not willing so to do. Being unwilling, they will resort to various methods of avoiding such contribution. The attempt of the state to compel them to contribute according to their ability will not be without injurious results: it will cause various changes in the direction of business enterprise. One of the ways of avoiding the necessity of paying a tax is to avoid the occasion which the assessor, acting under the law, seizes upon as a pretext for collecting a sum of money. If, for example, the possession of a certain kind of property is such an occasion, men will tend, within certain limits, to avoid the possession of that kind of property. In so far as men generally try to avoid the possession of such property, or to avoid the other occasions for which the assessor is on the look-out, in so far as industry and enterprise is disturbed and readjusted. These disturbances and readjustments may be more or less injurious, or more or less beneficial. If some taxes are to be approved because they repress certain undesirable industries, others must on the same reasoning, be condemned because they repress desirable industries. Since almost every tax has some effect in determining the direction of business enterprise, it is obvious that such considerations must enter into the determination of the duty of the state. The matter is therefore not settled when we have found out what the individual ought to do.

By an argument precisely similar to, though somewhat sounder than, that in favor of the faculty theory of taxation, the socialist could support his claim that the state ought to assume the direction of all industry and apportion to each individual his work and his income.

Major Premise. The individual ought to work for the economic welfare of the whole people.

Minor Premise. If each individual would voluntarily work according to his ability and consume according to his needs, the economic welfare would be promoted in the highest degree.

Conclusion. It is the duty of every individual to produce according to his ability and consume according to his needs.

Both the premises are probably sound, and, if so, the conclusion follows as a matter of course; but like the former argument it is inconclusive when applied to the question in hand, which is: What ought the *state* to do? This question is complicated in both cases by the fact that individuals are not willing to do what the conclusion points out as their logical duty, and will therefore adopt methods of avoiding such necessity if the state should attempt to impose it upon them. Such an attempt would therefore produce unlooked for, and, it is generally conceded, highly undesirable consequences. All this amounts to saying that it is not the duty of the state to try to do anything which it cannot accomplish, or in trying to accomplish which it would work mischief. What is here affirmed regarding the state is equally true of individuals. It is, for example, in the opinion of the present writer, highly desirable that all who read this article should agree with its conclusions, but even he does not consider it any one's duty to try to force them to do so — for the simple and only reason that such an attempt could never succeed, or if it did, it would produce other results more undesirable even than disagreement.

McCulloch alone among the leading writers on taxation seems to have grasped this fundamental truth, when he wrote:

It would, no doubt, be in various respects desirable that the inhabitants of a country should contribute to the support of its government in proportion to their means. This is obviously, however, a matter of secondary importance. It is the business of the legislator to look at the practical influence of different taxes, and to resort in preference to those by which the revenue may be raised with the least inconvenience. Should the taxes least adverse to the public interests fall on the contributors according to their respective abilities, it will be an additional recommendation in their favor. But the *salus populi* is in this, as it should be in every similar matter, the prime consideration; and the tax

which is best fitted to promote, or least opposed to, this great end, though it may not press quite equally on different orders of society, is to be preferred to a more equal but otherwise less advantageous tax. . . . The distinguishing characteristic of the best tax is, not that it is most nearly proportioned to the means of individuals, but that it is easily assessed and collected, and is, at the same time, most conducive, all things considered, to the public interests.¹

Far from ignoring all ethical considerations, as Bastable suggests,² this is a distinct recognition of an ethical principle more definite and more fundamental than any which Bastable himself recognizes in his discussion, or shows any signs of being aware of.

Leaving out of consideration for the present all benefits which the levying and collecting of a tax may confer, such as the suppression of an undesirable industry or the deepening of the taxpayer's interest in the affairs of the state, let us turn our attention to the sacrifices involved. There is, of course, to be considered the direct sacrifice on the part of him who pays a tax. Having his income curtailed by the amount of the tax, his power to consume, or to enjoy the use of wealth, is correspondingly reduced. This form of sacrifice is the most prominent, and has, naturally enough, generally appealed most strongly to writers on taxation. But there is also another form of sacrifice quite as important and fully as worthy of attention. Any tax which represses a desirable industry or form of activity not only imposes a sacrifice on him who pays it, but also upon those who are deprived of the services or the products of the repressed industry. Taxes should therefore be apportioned in such a way as to impose the smallest sum total of sacrifice of these two kinds.

While it is essential that both forms of sacrifice should be considered before reaching any final conclusion as to the best system of taxation, nevertheless the preliminary discussion may be facilitated by first considering them separately. If one were to consider only the first and more direct form of sacrifice, with a view to determining how the total sacrifice of this kind could be reduced to a minimum, he would be driven to conclude in favor of a highly progressive rate of taxation on incomes, with a somewhat

¹ *Taxation and the Funding System*, London, 1845, p. 19.

² *Public Finance*, London and N.Y., 1895, p. 314.

higher rate on incomes derived from more permanent sources, such as secure investments, than upon incomes from insecure sources, such as salaries. From the gross income which comes to him in the form of a salary, the receiver must make certain deductions in the way of insurance premiums, *e.g.*, to provide for the future, before he is on a level, in point of well being, with one whose net income comes to him from a permanent investment. The man with a salary of five thousand dollars would be no better off than another with an income of four thousand from a permanent investment, if the former would have to spend one thousand dollars of his salary in life insurance premiums in order to provide as well for his family as the latter's family would be provided for by the investment itself. Under these conditions, the sacrifice involved in the payment of an equal amount to the state would be equal, though the nominal incomes are unequal.

Leaving such matters out of consideration, a highly progressive rate of taxation would be necessary in order to secure the minimum of sacrifice, and for the following reasons. In the first place, a dollar is worth less, generally speaking, to a man with a large income than to a man with a small income, and a dollar taken from the former imposes a smaller sacrifice than a dollar taken from the latter. Moreover, if after the first dollar is taken from the first man, his income is still greater than that of the second man, the taking of a second dollar will occasion him less sacrifice than would the taking of a first dollar from the second man; so that if only two dollars were to be raised, they should both be taken from the first man. Applying this principle rigorously, we should continue taxing the largest income until it was reduced to such a level that the last dollar of the remaining income was worth as much to its owner as the last dollar of the next largest income is worth to its owner, and then only should we begin to tax the latter at all. Then the two should be taxed until they were reduced to a similar level with respect to the third largest, before the third largest is taxed at all, and so on until a sufficient revenue is raised.¹

¹ For a fuller discussion of this point, see an article by the present writer on "The Ethical Basis of Distribution and its Application to Taxation," in *The Annals of the American Academy of Political and Social Science*, July, 1895.

Such an application of the principle involves the assumption that wants are equal, which, though obviously not true, approximates more nearly to the truth than any other working assumption that could possibly be invented. Since the state must collect a revenue, it must have some definite assumption upon which it can proceed. The question is not, therefore, whether men's wants are equal, but whether there is any rule of inequality of wants upon which the apportionment of taxes could be made with a nearer approximation to the truth. If there be such a rule, it has not yet been discovered. To assume, for example, that the man whose income is greater than five thousand has correspondingly greater wants than the man whose income is less than five thousand, would be obviously unsafe, because there are even chances that the opposite would be true. Where the chances are even on both sides, it is safer to assume equality. Of a given number of men of the same age and the same general standard of health (by way of illustration) it is obviously untrue to assume that they will all live the same number of years, yet it is nearer the truth to assume that than any other definite workable principle. Consequently the life-insurance company acts justly when it assumes that they will live the same number of years, and apportions their premiums accordingly.

This in no way ignores the fact that wants expand with the opportunity of gratifying them. This objection, however, could only apply at the time when the tax was first imposed. At such a time it would doubtless be true that the five thousandth dollar taken from a man with an income of ten thousand would occasion him a greater sacrifice than the taking of the first dollar from an income of five thousand dollars would occasion its owner. But the reasons for this are twofold. In the first place, by taxing the first man so heavily the state would be depriving him of so many things which he was accustomed to enjoying that by the time the five thousandth dollar was reached, the taking of each particular dollar would be keenly felt. The last dollar of his remaining income would represent a greater utility to him than would the last dollar of the five thousand dollar income to its owner. In the second place, by taxing the second man so lightly as compared with his present taxes, the state would be allowing

him to consume some things to which he had not become accustomed. The taking of the particular dollar in question would not involve a very high sacrifice, for the reason that it would deprive him only of some enjoyment which had not yet entered into his standard of living. But both these reasons would disappear after the new tax had been in operation for a generation, or long enough to bring the standards of living of the two men to the same level.

Drastic as this method of taxation would be, yet, the writer contends, this is the method which would be logically forced upon us if we should adopt the utilitarian test, and should, in applying it, have regard only to the direct sacrifice on the part of those who pay the taxes, ignoring the indirect forms of sacrifice which a system of taxation inevitably imposes. J. S. Mill, who advocated equality of sacrifice as the rule of justice in taxation, was guilty of faulty reasoning on this point, doubtless because he had not made the analysis which subsequent writers have made into the nature of wants and their satisfaction. He was too good a utilitarian to advocate equality of sacrifice if he did not believe that it would involve the least sacrifice on the whole. This is shown by the following quotation, the italics of which are mine.

For what reason ought equality to be the rule in matters of taxation? For the reason that it ought to be so in all affairs of government. As a government ought to make no distinction of persons or classes in the strength of their claims on it, whatever sacrifice it requires from them should be made to bear as nearly as possible with the same pressure upon all, *which, it must be observed, is the mode by which the least sacrifice is occasioned on the whole.* If any one bears less than his fair share of the burden, some other person must suffer more than his share, and the alleviation to the one is not, *ceteris paribus*, so great a good to him, as the increased pressure upon another is an evil.¹

The last proposition in the above quotation would be true only of persons whose incomes were approximately equal. If A's income is twice as great as B's, or, to state it more accurately, if A's income were enough greater than B's so that a dollar is worth half as much to A as it is to B, then equality of sacrifice would be

¹ Principles of Political Economy, bk. v, ch. ii, sec. 2.

secured by making A pay twice as many dollars as B: by collecting \$100, for example, from A and \$50 from B. But the last dollar of A's remaining income would still be worth less to A than the last dollar of B's remaining income is worth to B: and the last dollar taken from A would occasion him less sacrifice than the last dollar taken from B has occasioned him. Then by taking more than \$100, say \$110, from A, and less than \$50, say \$40, from B the same revenue would be raised with a smaller sum total of sacrifice, for the gain to B by this change would be greater than the loss to A. This will appear at once to any one who at all understands the principle of marginal utility. The only conclusion one can draw is that the least sum total of direct sacrifice is secured, not by equality of sacrifice, but by equality of *marginal* sacrifice. Equality of marginal sacrifice would be secured by so apportioning taxes that, as a general rule, the last dollar collected from one man should impose the same sacrifice as the last dollar collected from any other man, though the total amount collected from each man might impose very unequal total sacrifices.

We are now in a position to test the validity of the minor premise in the argument on page 70: *viz.*, if each individual would voluntarily contribute in proportion to his ability, the whole burden of taxation could be most easily borne — *i.e.*, with the minimum of sacrifice. If one's ability is assumed to be measured by one's income, real and potential, and to vary with that income, then the minimum of sacrifice would not be secured by each one's paying according to his ability. If the rich would volunteer to pay more than in proportion to their ability, allowing the poor to pay less than in proportion to their ability, the burden would be more easily borne — *i.e.*, with less sacrifice — than if all should pay proportionally. As a statement of individual obligation, even, the faculty theory is untenable, unless modified and defined more rigidly than has yet been done. From the strictly utilitarian standpoint, the individual who measures his obligation to society by his total income is less to be commended than the individual who determines whether he has fulfilled his social obligations by considering, not how much he has given, but how much he has left. The latter type of individual

is well illustrated by the example of that religious and philanthropic leader who found, early in life, that he could live in comfort and maintain his maximum efficiency by the expenditure of a certain small income. Later in life, as his income increased, he continued living on his earlier income, devoting all his surplus to the service of society. This is mentioned merely by way of further elucidation of the proposition that if there were no indirect consequences of the attempt to collect taxes, the utilitarian test would require an enormously high rate of progression in the apportionment of taxes, and that, if the state were able to apportion and collect taxes on this basis, it would only be making individuals do what they ought to do voluntarily.

But there are indirect results, the most important of which is, as already pointed out, the repression of certain desirable industries and enterprises. The importance of this consideration becomes apparent when we reflect on the probable consequence of a system of taxation so drastically progressive as that suggested above. If a large share of one's income above a certain sum should be seized by the tax collector, it would tend to discourage the effort to increase one's income beyond that sum. In so far as this reduced the energy of the individual in business or professional life, the community would be deprived of his services. This deprivation would be a burden on the people, all the more regrettable because it would not enrich the public treasury in the least.¹

Such considerations become still more important when we come to the discussion of various forms of taxation, especially the taxation of various kinds of property. Since different kinds of property come into existence in different ways, taxes must affect them differently. A kind of property which is produced by labor, or comes into being as the result of enterprise, may be very seriously affected by a tax. Tax the makers of it and they will be less willing to make it. Tax the owners or users of it and they will be less willing to own or to use it. They will therefore pay less for it, and thus discourage the makers of it as effectively as if the latter had to pay the tax themselves. In either case, there

¹ See also Ross, "A New Canon of Taxation," *POLITICAL SCIENCE QUARTERLY*, vii, p. 585.

will be less of that kind of property made and used, and some members of the community who would otherwise have enjoyed the use of it will now be deprived of that use. This is a burden to them, and, moreover, a burden which in no way adds revenue to the state. Such a tax is repressive. On the other hand, a kind of property whose existence does not depend upon individual labor or enterprise, will be less affected by a tax. Tax the owner of a piece of land, and, while you make him less anxious to own it, you will not cause him to abandon it. While you lower its price, you do not reduce the amount of land nor deprive the community of the use and enjoyment of anything which it would otherwise have had. Such a tax is not repressive.

As a general proposition, it is safe to say that, other things equal, a tax which represses desirable enterprises or activities, and thus deprives the community of the use and enjoyment of certain desirable goods, is more burdensome in proportion to the revenue raised than a tax which does not entail such results. In other words, a repressive tax is more burdensome than a non-repressive tax. A proposition much more to the point is that a tax on any form of property or income which comes into being as the result of the productive industry or enterprise of its owner is more repressive than a tax on any form of property or income which does not so come into being. By productive industry and enterprise is meant such industry and enterprise as adds something in the way of utility to the community, and not such as merely costs something to its possessor. Skill in buying land may cost as much study and care as skill in making shoes; but, whereas those who exercise the latter kind of skill increase the number of shoes, it has never been shown that those who exercise the former kind add anything whatever to the community's stock of useful goods. Tax shoe factories and, in so far as it represses the industry, the community will have fewer shoes. Tax the land and the community will not have less of anything than it would have without the tax. What is said of a tax on land could also be said, within limits, of a tax on inheritances. From the standpoint of non-repressive taxation, therefore, both the land tax and the inheritance tax have much to be said in their favor.

Any one who is familiar with the subject of the shifting and

incidence of taxation will see at once that there is a close connection between the repressive effects of a tax and the shifting of it. A tax can be shifted, generally speaking, only when it affects the demand for, or the supply of, and consequently the value of, the thing taxed. The more easily a tax affects the supply or demand, the more easily it is shifted. A tax which does either of these things is repressive: it affects supply by repressing production; it affects demand by repressing consumption. A careful analysis of the conditions under which taxes may be shifted is, therefore, very much to be desired.¹ Such an analysis would enable us to form conclusions as to the repressive or non-repressive effects of various taxes.

As applied to incomes in general, without regard to their source, a progressive, even a highly progressive, tax will occasion, on the whole, less direct sacrifice to the taxpayers than a proportional tax. A progressive tax is therefore to be commended, unless the rate of progression is made so high as to discourage the receivers of large incomes from trying to increase them. If the rate of progression is so high as this, the indirect form of sacrifice, growing out of the repressive effects of the tax, will counteract, wholly or in part, the reduction in the direct form of sacrifice. A moderately progressive income tax would, therefore, seem to be more desirable than a proportional one. But as between different kinds of income and different kinds of property, the preference should be given to those taxes which fall upon natural products, such as land, rather than upon produced goods, and upon increments of wealth which come to an individual through natural causes over which he has no control — inheritances, for instance — rather than upon incomes earned by the individuals themselves. Such taxes are less repressive than most other special forms of taxation, and therefore occasion less sacrifice of the indirect kind.

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¹ For an attempt in this direction, see the present writer's article on "The Shifting of Taxes," *Yale Review*, 1896. See also Seligman's *Shifting and Incidence of Taxation* for a brilliant survey of the earlier attempts.

NEW ENGLAND COLONIAL FINANCE

IN THE SEVENTEENTH CENTURY.

THE industrial and commercial basis on which the system of self-government in the corporate colonies ultimately rested, revealed itself most distinctly in their finances. That is the point where, in all systems, economic and political institutions come most closely in contact. The estates of the colonists consisted mainly of land, of the inexpensive buildings which stood upon it and of the cattle and farming utensils which were required to stock it. In the settlements which were located on the coast were to be found small warehouses, wharves, merchant vessels, and stocks of imported goods. A few small iron mines were worked here and there. The beaver trade was, or might be, a source of income to many individuals; in some of the colonies it was such, though in New England it never reached great proportions. Trade with the Indians and the sale of liquor were forms of business which especially called for control by a system of licenses. These references suggest the chief sources of income, from which, together with judicial fines, public revenue in all the colonies was derived.

It is necessary briefly to outline the system of taxation and expenditure, together with its chief administrative features, which developed in the early New England colonies. In their finances, as in all other departments of their activity, the colonies of this group resemble one another in all essential particulars. They differ only in comparatively unimportant details. The main outline of their system was the same as that of the provinces; but the divergencies between the two groups — the provinces and the corporate colonies — were greater and more numerous than those which appear among the corporate colonies themselves.

In all the colonies, provincial as well as corporate, the supply of coin was far smaller than was needed, even for their limited exchanges. The permanent excess among them of imports over exports tended constantly to draw away to Europe, or elsewhere,

the supplies of coin which came through trade or were brought by pirates. Massachusetts sought to supply its need by the establishment of a mint, and its coins circulated widely among the neighboring colonies. The proprietor of Maryland caused small coins to be privately stamped in England for use in his province. On a minute scale a few other experiments of this kind were tried. But, taken all together, they did not prevent a general resort to barter.

The reversion of the colonists toward primitive conditions of life was evidenced, perhaps, more clearly by this fact than by any other. It was reflected in the financial systems of all of them. It necessitated the payment of taxes — especially direct taxes — in kind. In the tax laws of the period, if they were drawn with any care, the rates at which various commodities or products common to the region would be received in payment of public dues had to be prescribed. These commodities were chiefly the cereals and other farm products, skins, cattle, and wampum; in the southern provinces tobacco and rice. In New England corn was the representative commodity; elsewhere it was tobacco. The requirement that taxes should be paid in commodities made it necessary that collectors and treasurers should keep a magazine,¹ where the products could be stored until they were marketed for the government or transferred in payment of its debts. When cattle were receivable, a stock-yard had to be maintained. The commodities in particular were liable to deterioration while in transit, and to losses of this kind the government was continually exposed. In this way, as well as in others, the system of barter added to the financial difficulties of the colonies. In 1655, in order to spur the constables to greater promptness, they were ordered by the general court of Massachusetts "to impresse boates or carts for the better & more speedy sending in the rates according to the times appointed by lawe."² In order to avoid "the charge and trouble of transportation of the rates," the general court ordered, in November, 1675, that if bills for wages and

¹ In Connecticut we hear of a proposition in 1667 to hire "a chamber for the keeping of the Country Rate in the respective towns from the time of the gathering of it till it is payd." Conn. Recs. ii. 64.

² Mass. Recs. iv. 247.

other government debts were sent from the localities to the colony treasurer, he should return certificates which would enable the debtors to secure their pay from the commodities collected as rates in those same localities.¹

The levy of direct taxes by the corporate colonies was a remarkable extension of the right of trading corporations in England to levy assessments on their stockholders. This practice, however, if literally followed by the Massachusetts company after its removal into the colony, would have restricted to freemen the obligation to pay taxes. But no limitation of this kind was ever observed. From the outset non-freemen were taxed equally with freemen in all the New England colonies. The principle which they aimed to follow in their systems of taxation was set forth in the Massachusetts order of 1634:

It is further ordered, that in all rates & publique charges, the townes shall have respect to levy every man according to his estate, & with consideration of all other his abilityes, whatsoever, & not according to the number of his persons.²

In 1638 the court declared that every inhabitant was liable to contribute to all charges, both in church and commonwealth, and this declaration was specially made in view of the fact that many non-freemen had refused to share in certain voluntary contributions.

New England was the home of the "rate." The country rate, the county rate, the town rate, these were the designations of the chief forms of direct taxation in all that group of colonies. It was the country rate — the tax that is of chief importance in this connection — which developed out of the assessments on stockholders. It was defined by the general court of Massachusetts in 1639 as "such rates as are assessed by order of the publique Court for the countryes occations & no other."³ In Plymouth the rates were levied on the inhabitants of each town "according to goods, lands, improved faculties, and personall abillities."⁴ By improved land was then meant meadow, ploughed and hoed land. In 1658 the law specified in greater detail that rates should be

¹ Mass. Recs. v, 66.

² *Ibid.* i, 120, 240.

³ *Ibid.* i, 277.

⁴ Plymouth Col. Recs. xi, 42, 142, 211.

levied, though in varying proportions, on all appropriated lands whether improved, meadow, or dormant; upon cotton goods, stock employed in trading, boats and other vessels, mills, and other visible estate. The equivalent of this description, though usually in briefer terms, can be found in the records of all the other corporate colonies.¹ In 1668 and 1669 Massachusetts carefully provided for the levy and collection of the rate even upon imported goods at the ports. Entry of such goods before officers specially appointed for the purpose was required. These acts were passed in response to complaints of inequality of taxation.²

The rate, whether it was a colony or a local levy, was a general property tax. It was levied on the entire estate, so far as it could be ascertained, of those who were liable to the tax. Occasionally slight exceptions were made,³ but the rule was as just stated. An order which was issued by the general court of Massachusetts in 1651 indicates that, then as now, merchants were able to conceal their property, and therefore the weight of the tax fell unfairly on the farmer.⁴ For this reason the court ordered that all merchants, shopkeepers, and factors should be assessed "by the rule of common estimation, according to the will and doome of the assessors in such cases appointed." Regard should be had to the stock and estate of the parties, in whose hands soever it might be, "that such great estates as come yeerely into the countrie may beare their proportion in publicke chardges." In the loans relating to rates the estimated values of domestic cattle were often stated in detail, but no effort was made to do the same in reference to other forms of property.

With the country rate was regularly combined a poll tax, and sometimes also a form of income tax. In the Massachusetts law of 1646, by which rates were more carefully defined than in any previous act, this statement was made:

That a due proportion may be had in all publicke rates, it is ordered that every male within this jurisdiction, servant or other, of ye age of

¹ Mass. Recs. i, 120; ii, 213; Conn. Recs. i, 548; New Haven Recs. i, 494; ii, 581; R. I. Recs. ii, 510.

² Mass. Recs. iv,² 363, 418.

³ *Ibid.* ii, 174.

⁴ *Ibid.* iv,¹ 37. Douglas, *Columbia Studies in History, etc.* i, 274.

16 years & upward, shall pay yearly into ye common treasury ye summe of 20 *d.* . . .

Though provision was later made for exemptions, this enactment accompanied all subsequent levies of country rates in Massachusetts. In 1647 the rate of the poll tax was increased to 2*s.* 6*d.* This was maintained until 1653, when the former rate was restored.¹ The same combination of the poll tax with the property tax appears in Connecticut and New Haven,² but not in Plymouth or in Rhode Island.

The levy on incomes was introduced in Massachusetts by the act of 1646. This was intended to reach artisans who could afford to contribute more toward the public charge than could mere day laborers. According to the law of 1646 artificers who received 18*d.* per day in the summer time should pay 3*s.* 4*d.* annually in excess of their poll tax, while smiths, butchers, bakers, cooks, victuallers, and the like, if they were not disabled by sickness or infirmity from exercising their callings, should pay in proportion to their incomes.³ The express intention of the law was to tax the incomes of this class proportionably to the levy which was imposed on the estates of other men. This feature of the Massachusetts system was favored by other colonies; it was incorporated in the Connecticut code of 1650 and the New Haven code of 1656.⁴ No trace of it appears in Plymouth or Rhode Island. How long the tax was continued in Massachusetts it is impossible to tell.

The country rate as originally levied was a lump sum, which was distributed by the general court in the form of quotas among the towns. In September, 1630, the magistrates at Boston ordered that £50 should be collected for the support of the two captains, Patrick and Underhill, and each town was assigned its proportionate quota. In September, 1634, the general court ordered a similar levy for general public purposes, and it was distributed in the same way.⁵ This was originally the form of en-

¹ Mass. Recs. ii, 173, 213; iv,¹ 155. Douglas, *op. cit.* 277.

² Conn. Recs. i, 548. New Haven Recs. i, 494; ii, 581; Howard, *Local Const. History of the United States*, 342.

³ Mass. Recs. ii, 173, 213.

⁴ Conn. Recs. i, 549; New Haven Recs. ii, 582. ⁵ Mass. Recs. i, 77, 129.

actment in all corporate colonies. It devolved upon the towns the task of assessment and collection. It appears to have continued as the form of levy in Plymouth as long as that colony had a separate existence.¹ It was adapted to the relatively independent position of the towns in Rhode Island, and to the unusually loose administrative methods which obtained there. In that colony the rate seems to have continued in this crude form until about 1695.² From a single reference in the records it may be inferred that the assembly, sometimes at least, ventured a "guess" that a penny or a farthing in the pound, as the case might be, would yield the needed sum.³

In Massachusetts, however, beginning in 1646, definite provision was made that the country rate should be a tax of one penny in the pound on all visible estate in the colony. Though the towns still continue to be units of levy, the quota system disappears. A common levy was made throughout the colony. The same form of rating was introduced in Connecticut as early as 1650, and by or before 1656 it went into force in the colony of New Haven.⁴ By this process the country rate came to mean in any colony, at any given time, a definite amount of revenue. Given a certain list of taxables and a certain valuation of their estates, the amount of revenue which would result, provided it was all collected, would be a fixed sum. It was this sum which the New England legislators had in mind when they voted "a rate." The sum was as truly a fixed one as was that which the English government had in view when in the later middle age it levied a tenth and fifteenth. When a smaller sum was required, a fraction of a rate, for example a half-rate, was levied. Sometimes one or more farthings in the pound, instead of the full penny, was levied. When a larger sum was required than that yielded by a single rate, a multiple of the rate was levied. During Philip's war as many as nine or ten rates were levied by Mas-

¹ Plymouth Recs. iv, 77, 91; R. I. Recs. i, 384, 395, 416. Also a number of rates which follow in this and the next volume for the payment of the charges of John Clarke as agent.

² R. I. Recs. iii, 275, 300; Arnold, i, 534.

³ R. I. Recs. ii, 510.

⁴ Mass. Recs. ii, 173. See the Codes of Connecticut and New Haven.

sachusetts at once. In 1680 four rates were levied, two to be paid in money and two in corn. In 1681 two and one-half rates were levied; in 1683, two rates; in 1684, two rates in money and one in country pay.¹ In Connecticut at the same period the appropriation increased in a similar manner. In 1675 a rate of 12*d.* in the pound, in 1676 one of 18*d.*, and in 1677 another of 8*d.* were levied.²

It is a curious fact that every increase in the number of rates which were levied was accompanied by a corresponding reduplication of the poll tax, which always formed a part of the general levy. It might be doubled or trebled; in such a crisis as that of Philip's War it might be increased tenfold. Under such circumstances it became very burdensome, and not unnaturally called forth protests from those who suffered from its imposition.³

The administrative process which was necessitated by the imposition of the country rate, was the preparation of the list of taxables, with the estates which they possessed at their estimated value, the correction of these lists, the issue of warrants in accordance with them, and the collection of the tax.

The earliest comprehensive act concerning the mode of levying rates in Massachusetts was that of 1646, reënacted in 1647, 1651, and 1657. The treasurer should issue a warrant to the constable and selectmen of every town requiring the constable to call together the inhabitants of the town. When assembled they should choose one of their freemen, who as a commissioner with the selectmen should make a list of all males in the town who were sixteen years old and upwards and an estimation of their real and personal estates. In the first week in September of every year the commissioners of the several towns in each shire should meet at the shire town, bringing with them the above lists, and there they should be examined and perfected. Then the lists should be sent to the colony treasurer, and the treasurer should issue warrants to the constables of the several towns to collect the specified sums.⁴ In 1665 an act was passed providing that merchant strangers, who had been attempting to escape tax-

¹ *Mass. Recs.* v.² 415, 464; v, 45, 76, 81, 88, 130, 200, 324, 417, 454.

² *Conn. Recs.* iii. 423.

³ Douglas, *op. cit.* 278.

⁴ *Laws. ed. of 1887*, p. 25.

ation by bringing in goods and selling them and leaving the colony between the making up of the tax list of one year and that of the succeeding year, should be assessed by the selectmen of the towns where they were, and according to the value of cargoes they should bring; if they refused to declare these, they should be taxed according to a single rate at any time of the year when they should be present "by will and doom."

Substantially the same system of assessment existed in the other colonies of the group. In Plymouth each town was required to choose two or three men, who should make a list of the ratable estates of the town. When it had been prepared, the town was called together to hear the list read. After the necessary corrections had been made, as the county had not developed in this colony the list was submitted directly to the general court in June of each year. By it the treasurer was ordered to issue warrants ordering the constables to collect.¹ In Connecticut the town lists had first to be examined and equalized by the commissioners of all the towns in the respective counties, and then they were submitted to the general court. In the colony of New Haven either townsmen, or men specially appointed for the purpose, could prepare the list in each town. The lists must be submitted to the May court by the deputies from the respective towns. Each plantation should collect its country rate and pay it to the colony treasurer, as directed by the general court.² In Connecticut, at least, towns sometimes neglected to submit their lists, and had to be threatened with fines.

Until 1673 no express regulations seem to have been made by Rhode Island concerning the subject. In the briefest possible terms the towns were ordered to raise their quotas. In the last-mentioned year, apparently forced in part by the repeated failure of their efforts to raise a fund with which to pay John Clarke for his services as agent in England, a rambling, ill-drawn act was passed on the subject of the collection of rates.³ This act left it to each individual, under an order from his town, to report his

¹ Plymouth Recs. xi, 166, 219, 241. A typical order of the general court for the levy of a rate is that of June 7, 1665. *Ibid.* iv, 91.

² Conn. Recs. i, 549; ii, 48; New Haven Recs. ii, 581, 582.

³ R. I. Recs. ii, 510.

ratable estate. If it should be found by the general assembly that parties — possibly whole towns — had not rated themselves or had not reported the fact, it might appoint men “to guess at their estates, and rate them as they should have done themselves.” That all the colonies found difficulty in securing the payment of rates, is shown by their repeated orders on the subject. The right to collect by distraint was generally given to constables. But personal influence or indifference often rendered all efforts ineffective. As might have been expected, Rhode Island had more difficulties in this respect than the other colonies, and her administrative system continued to be too weak to overcome them.

In two of the New England colonies, Massachusetts and Connecticut, counties developed during the seventeenth century. When the revenue which was yielded by the county court in the form of fines and costs failed to meet the necessary expenses, the justices of the court were empowered to levy a rate. The county rate was similar in every respect to the country rate, and the method of assessing and collecting the two was the same.¹ In Massachusetts an elected county treasurer received the revenues, whether in the form of fines, dues, or tax. When a rate was levied, the treasurer issued the warrants under an order from the county court. He was bound annually to account to the court for his use of the funds. With the levy of the country rate the counties had no concern, except as areas for equalization.

The direct taxes were not the only source of colony revenue. In all of them a system of indirect taxation existed as well. They all, with the exception of Rhode Island, resorted to export and import duties and to the excise. About 1645 a tonnage duty was for a brief period levied by Massachusetts.² In 1667 and 1679 that colony again levied a tonnage duty, making it payable in the former case in powder and in the latter case in money at the rate of 1s. per ton on vessels which traded to and from its ports, but which were not owned in the colony. This was a form of duty which was ultimately resorted to by all the colonies,

¹ Mass. Recs. iv, 184, 259. In Connecticut, under an order of 1671, the county treasurers were appointed by the county courts. Conn. Recs. ii, 163.

² Mass. Recs. ii, 107, 131.

and the revenue from it was in very many, if not most, cases used for the maintenance of fortifications. In 1632 Massachusetts imposed a duty of 12*d.* per pound on beaver that was bought from the Indians; but three years later the act was repealed. Like the beaver trade itself, this form of tax played no great part in the commercial or fiscal systems of the New England colonies.

In 1636 an import duty of one-sixth their value was laid on fruits, spices, sugar, wine, liquors, and tobacco, and for those who intended to retail these commodities the rate was doubled.¹ Commodities in transit and wine which was bought for use by the churches in the communion service, were not subject to this duty. This was the beginning of the system of customs revenue in New England.

With the Puritans the tendency toward police regulations for the repression of drunkenness was strong, though it by no means went as far as to discourage the liquor traffic as a whole. This neutral attitude led naturally to the introduction of the excise on the retailing of liquors. In 1644 the first act on the subject was passed by Massachusetts. The next year it was revised, and a customs duty on wine imported for sale was combined with the excise. The duty was an *ad valorem* rate of one twenty-fourth while the excise was an additional one-twentieth. In 1648 specific duties, varying with the place of origin of the product, were substituted for the uniform *ad valorem* rates. In 1668 cider, mumm, ale, and beer were added to the list of excisable liquors, these all being domestic products.² This combination of duties remained as a part of the fiscal system of Massachusetts throughout the colonial period. In 1668 the list of imported commodities which were made subject to duty was greatly increased so as to include not merely wines and liquors, money, plate, bullion, salt, but provisions and merchandise in general. The rate was two per cent *ad valorem*. During Philip's war the rates of duty on wine and brandy were doubled.³

Plymouth levied export duties on a number of its domestic products — on boards and planks, barrel and hogshhead staves and

¹ *Ibid.* i, 186.

² *Ibid.* ii, 82, 106, 246; iv, 365; Colonial Laws, 1887, 69.

³ Mass. Recs. v, 138.

headings; on tar, oysters, and iron. This policy was continued from 1662 to the period of the absorption of the colony in the Dominion of New England.¹ At about the time when both Massachusetts and New Netherland were resorting to the excise on the retail of liquors, Plymouth also imposed it, adding tobacco and oil to the list.² The immediate object sought was to secure means for defraying the charges of the magistrates' table, but the older officials of this colony may well have remembered the prominent place which was occupied by the excise in the fiscal system of the Netherlands.

Interest attaches to the experiment of Plymouth with a government monopoly in the mackerel fishery at Cape Cod, and also to the enforcement of its royalty over drift whales. In 1646, when the excise was first enacted, a license fee was imposed on fishing at the Cape. In 1661 the rate for non-residents was fixed at 6*d.* per quintal. In 1670 inhabitants of the colony were required to pay 6*d.* per barrel for mackerel brought to shore there, and strangers, 1*s.* 6*d.* per barrel. A water bailiff was specially appointed to collect the impost and enforce the act. In 1677 the colony leased its privileges in this fishery for seven years at £30 per year. In 1684 the treasurer was ordered to lease the fishery for another period of years;³ and it was leased, though the contract was broken by the lessor before the period had elapsed. For a time the trade to the Kennebec river seems also to have been leased by the colony, but the revenue from that source was temporary and very slight.

On the subject of drift whales there was repeated legislation. In 1652 it was ordered that,

whereas the publicke charges of the colonie are encreased and whereas by God's providence many whales and other fishes are cast on shore in many ports of this Jurisdiction, out of which the court sees reason to require some part of the Oyle made of them,

one barrel of merchantable oil from every whale thus cast or brought on shore should be delivered to the colony treasurer

¹ Brigham, *Laws of New Plymouth*; *Plymouth Recs.* xi, 132, 134.

² *Ibid.* ii, 101, 103, 105; xi, 51.

³ *Ibid.* xi, 131, 228, 231; v 244; vi, 132, 218.

by the town on whose shores the whale was found. Four years later the town was required to deliver the oil at its own cost at the Boston market. Later still it was proposed to allow the towns to lease this business, but this plan was not executed.¹

In Connecticut and New Haven the import duty and the excise on liquors were combined in much the same way as in Massachusetts. But in neither of these colonies, during the period under review, was the tariff list extended to include imported commodities in general. With the exception of an import duty on tobacco, which was imposed by Connecticut in 1662, wines and liquors were the only imports on which duties were levied.²

In the accessible records of Rhode Island no reference to a customs duty appears until 1700, when a rate of five per cent was imposed upon goods which were imported for sale by persons who were not inhabitants. No provision was made in the act for a custom house, but the duty was made payable to the clerk of the town where the importer or pedler appeared with his goods for sale. He must also submit a true inventory of his goods under oath to the assistant, justice, or warden of the said town. The penalty of violating the act was forfeiture, the same to be enforced by the town sergeant, and return thereof should be made to the recorder of the colony. No provision whatever was made for a custom house for the colony. It is safe to say that nowhere, even among the laws of Rhode Island, were the powers of the town extended farther beyond their customary sphere than in this instance.³ We are told that many orders were issued for the levy of an excise in Rhode Island, but of these only the act of 1669 appears to have survived.⁴

By the first act imposing a customs duty in Massachusetts provision was made for a collector, though the title was not conferred in the law. He was to be appointed by the governor and council,

¹ Plymouth Recs. xi, 61, 66, 114, 132, 138, 207.

² Conn. Recs. i, 332, 380, 383, 396; New Haven Recs, ii, 145, 591. The duty on tobacco was imposed in order to check its importation from the southern colonies, while really in transit for Europe. The act had as its ostensible purpose coöperation with England in the enforcement of the acts of trade.

³ R. I. Recs. iii, 422.

⁴ *Ibid.* ii, 252.

and was empowered to have deputies. He was put under oath.¹ He should survey all vessels in the harbors of the colony, and search all warehouses and places where goods subject to the duty might be stored. Forfeiture of the goods was made the penalty for smuggling. The sums collected by the customs officers must be paid over to the treasurer of the colony, and with the last-named officer rested the authority to levy by distress, if payment was unduly delayed or was refused. The act of 1636 provided that the collector should receive as his reward one-third of what he collected. After 1648, however, the collection, first of customs on wines and later of those on all other liquors, together with the excise, the fur trade, and the sale of ammunition to the Indians, was farmed out for periods of three or five years. At first the sum of £120 per year was paid by the farmer for the privilege, but the sum was gradually increased until, in 1668, £600 per year were offered.² Under this system the farmers were the collectors, and they were concerned with the excise as well as with the customs.

According to the law of 1645 the invoices of imported liquors had to be sworn to before the governor or deputy governor, while by the law of 1648 stricter regulations were made concerning the duties of the collector. These were slightly modified both ten and twenty years later, the chief officer, in imitation of English usage, being known as the customer, and his deputies as searchers and waiters. Constables and other officers were required to assist them in the work of search and seizure.³

In Connecticut, by the act of 1659, customs officers were designated for nine settlements along the River and Sound, and the fees which they were to receive for their services were specified.⁴ As time passed offices of this class were limited to the two or three leading ports on the Sound.

In all the colonies, with the possible exception of Rhode Island,

¹ The oath of Bendall, the first "customer," is in Mass. Recs. ii, 284. See *ibid.* iv,¹ 10, 193.

² *Ibid.* iv,¹ iii, 112, 327; iv,² 315, 366, 398, 495. Richard Way, who took the contract at the last-mentioned sum, three years later, had to plead for an abatement in order to prevent a total loss of his profit.

³ Mass. Col. Laws, 1887, 68.

⁴ Conn. Recs. i, 332.

defence was the principal object of expenditure. This involved the payment of wages of soldiers and officers, payment for their supplies, for such stockades or forts as might be built by the colony, pensions and other forms of support for wounded soldiers and their families and for the families of those who had been slain. The support of the militia captains appears among the earliest objects of appropriation in Massachusetts. In September, 1634, the treasurer was ordered to furnish such money as the commissioners of defence should require. A year later Ludlow was expending money on Castle island for which he was ordered to account to the treasurer and Mr. Nowell. For these purposes personal service was also impressed, and that on a considerable scale, in 1635. Many instances occur of the advance of money to towns to be used by them in building breastworks or other defences. It was in 1637, to meet the debts incurred on the Pequot expedition, and as the result of other measures of defence, that a rate of £1000 — the largest at that time levied — was imposed.

Each of the successive expeditions against the Indians of course occasioned votes of supplies by all the colonies concerned. The expedition of 1645 and the preparations for that of 1664 against the Dutch, occasioned such appropriations.¹ Toward the former expedition Plymouth appropriated £70. Of this nearly one-half was to be paid by the towns directly to their soldiers, and the remainder was to be expended through the office of the colony treasurer.² The earliest rates which were levied by the river towns were intended to meet the cost of the expedition against the Pequots. The building and repair of the fort at Saybrook was another important object of expenditure.³ Charges for the maintenance of the fort and of the castle in Boston harbor appear at frequent intervals in the records.⁴ The most detailed among the yearly acts for the levy of rates in Rhode Island was that of 1667 for the improvement of the defences of Newport, and to repair the arms of its inhabitants and secure a new supply.⁵ A

¹ Mass. Recs. i, 129, 138, 158, 165, 209; ii, 124; iv,² 121, 123.

² Plymouth Recs. ii, 91.

³ Conn. Recs. i, 11, 12, 95, 139, 161, 235.

⁴ Mass. Recs. i, 231; ii, 255, 260; iii, 5; iv,¹ 281; v, 204, 222.

R. I. Recs. ii, 196.

part of the cost of supplying arms was in all the colonies imposed on the towns, but a colony magazine was also in most cases maintained. Cannon were purchased by the colony.

It was in connection with Philip's war that expenditures for military purposes attained by far their largest development. This has been indicated in what has already been said concerning rates. In March, 1676, Plymouth levied by quotas on the towns what was for her the unprecedented sum of £1000. This was to be expended in clothing and provisions for the soldiers. Shortly after this the sum of £121, 10s., which had been contributed by "Christians in Ireland" for the relief of those who had been impoverished by the war, became available, and was distributed among the towns. Rehoboth and Dartmouth received the largest share. In June, 1677, a committee was appointed by the general court to hear claims against the colony on account of the war and report, so that the debts of the colony might be known.¹ According to accounts which were submitted to the Commissioners of the United Colonies, Plymouth, through its towns and through the office of the colony treasurer combined, had expended £11,743 upon the war. Massachusetts reported an expenditure of £46,292.² Three rates, which were levied by Connecticut during the years 1675 to 1677, yielded a total of £23,185.

The extent to which Plymouth, during and after the struggle, devoted its resources to the support of those who had suffered injury or loss in consequence of it, is remarkable. On that occasion a pension system was developed on a larger scale than appears elsewhere during the entire colonial period. Plymouth, as early as 1636, had enacted that if any one should return from military service maimed, he should be maintained by the colony for life.³ During Philip's war she made many grants to wounded soldiers and to the widows and families of those who were slain. In October, 1675, £60 were granted to Theophilus Witherell, who had been wounded in the war and made a cripple for life. By the same court £10 from the profits of the fishery at Cape Cod were granted to the widow and children of John Knowles,

¹ Plymouth Recs. v, 191, 222, 234; vi, 118.

² Recs. of the United Col. in Conn. Recs. iii, 492, 493, 502.

³ Plymouth Recs. xi, 182.

who was a recent victim. Two other widows received grants at the same time.¹ Many other similar instances might be cited. A special grant of land was made to Captain Gorham for his services.

The Massachusetts court, in October, 1678, granted to Richard Russ, who had been wounded in the war, the sum which the curing of his wounds had cost him.² Several other cases of such grants are recorded, but they are not relatively so numerous as in Plymouth. Rewards for public service in Massachusetts, whether rendered in peace or war, not infrequently took the form of exemption from rates, or the grant of special gratuities. This leads directly to the consideration of another object of expenditure, the reward or salaries of public officials.

A generation or more passed after the founding of the New England colonies before what can be called a salary system began to develop. Gratuitous service, or service without definite expectation of reward, was long rendered by many of the early magistrates of those colonies. In New England, as among the other colonies, fees formed an important part of official reward, especially for all who were in any way connected with judicial business. As a class the clergy were the first to receive salaries. Magistrates and clergymen were also regularly exempted from the payment of rates. Special services, whether in war or in civil life, were not infrequently followed in Massachusetts by exemption from rates. In 1636 Nowell, the secretary, was permanently exempted from their payment. After the Pequot war Stoughton was exempted for one year. In 1639 the property of Cradock was exempted, because of the expense which he had borne in the building of a bridge. In 1653, the estate of Governor Dudley was exempted from a rate. In 1668 the people of Marblehead, because of a poor fishing season and of the charge which the town had incurred in building a battery, were exempted from a single rate. Certain inhabitants of towns which suffered severely in Philip's war were temporarily exempted; for example, residents in Medfield and Hatfield. The town of Lancaster was

¹ *Ibid.* v, 177, 241, 271; vi, 18, 32, 40, 52, 65, 88, 93, 106, 130, 188.

² *Mass. Recs.* v, 206, 264, 280, 282, 283, 298.

exempted by order of 1682 for two years. Its share in two rates was allowed to Sherborn as an aid toward the building of a meeting-house for the town and a house for the minister. In response to a petition the selectmen of Boston, in February, 1684, were empowered to abate the rates of such as had suffered by the recent fire. In 1685 John Fiske of Wenham, because he had been disabled by wounds in the late Indian war, was permanently exempted from country rates.¹

Reward for public services also took the form of special grants. This was the germ from which the system of salaries developed. At the May court in 1632 Winthrop, who had been granted no salary, stated that he had received gratuities from individuals and from several towns; but he did so with trembling, because of God's law and of his own infirmity.² He declared that he would take no more, except from assistants or from particular friends. In July of the following year, it was voted to give him £150 toward his charges for the year, and that he be repaid the sum — between £200 and £300 — which he had advanced for the payment of officers' wages and to meet other public charges. In September, 1634, through a committee which was appointed to audit his accounts, Winthrop reported that, during the four years of his official service, he had expended £1200 in excess of what would have been necessary if he had remained in private station. In return he had received his salary of £150 and gratuities to the amount of £100 more.³ He made no demand, however, for a salary. In 1636 a stipend was fixed on the marshal which, with his fees, would amount to £40 per year. In 1637 £100 was allowed as the governor's salary, "the same allowance to be given to the succeeding governor as a settled stipend." In 1638 it was enacted that each town should bear the charges of its magistrates and deputies during the sessions of the general court, and the daily rate of their wages was fixed. The next year it was ordered that the cost of their "diet and lodging" should be paid out of the revenue from the fines. Thus a practice was established in reference to these items of expenditure which was widely followed

¹ Mass. Recs. i, 182, 215, 257; iv,¹ 174; iv,² 377; v, 182, 188, 341, 345, 433, 471.

² Winthrop, Journal, i, 92; Mass. Recs. i, 106.

³ Mass. Recs. i, 130.

by the colonies. In 1644 the governor was receiving a salary of £100. In 1645 the deputy governor was receiving an allowance of £50. From time to time gratuities were added to these sums.¹ When agents were sent to England, their expenses were paid and they received special remuneration. This was the practice in all the colonies.

In 1653 something which might be called a salary system was established by law, as a means, however, of reducing rather than increasing expenditure.² This provided that magistrates who had been in office ten years should be allowed £30 per annum, and from this should pay all their expenses while in attendance on courts. Magistrates who had served less than ten years should receive £20 per annum; persons who hereafter should be appointed to the magistracy should receive £15 a year. The governor should be paid, "from year to year," £120, and this was for himself and his "attendants." The salary of the secretary was fixed at £45. In 1651 the allowance of the secretary was fixed at £40. In addition he was entitled to fees for transcribing documents for the towns and individuals.³ In 1659 his salary was increased to £60 per year. That of the surveyor general had been fixed, as two years before, at £5 per annum. The charges of the county courts, including judges, juries, and officers, must be met from the actions arising in those courts.⁴ The wages of jurymen were prescribed in this act. Towns should continue to pay the wages of their deputies to the general court, but towns of not more than thirty freemen might send deputies or not, as they chose. In 1654 the salary of the clerk of the deputies was declared to be £16 per annum, he bearing the expense of his food and lodging.⁵ We know that Commissioners of the United Colonies received wages for their services. The inference is that officers like the treasurer, who were not mentioned in this act, were supported by fees, receiving, it may be, an occasional gratuity in addition. The rates of fees were, in all cases and in all

¹ *Ibid.* i, 182, 215, 228; ii, 53, 116, 136, 165, 194, 271; iv,¹ 4, 35, 46, 65, 66, 68, 74; iv,² 75, 88, 113. ² *Ibid.* iv,¹ 154. ³ *Ibid.* iv,¹ 63, 391.

⁴ *Ibid.* 185. The rates of salary had not been greatly changed when Randolph was in Massachusetts in 1678. Toppan, Randolph, iii, 11.

⁵ Mass. Recs. iv,¹ 206.

the corporate colonies, determined by the general court or by officials whose responsibility to the court was clear and definite. Under the corporate system the question of fees, which caused so much dissension between the executives and assemblies in the provinces, could not arise.

It thus appears that salaries in colonial Massachusetts were very moderate, and in the gross they amounted to only a small sum. They were, however, supplemented by some fees and by gratuities. But of greater importance than the gratuities in money were the grants of land which were repeatedly made to leading magistrates and their favorites, especially to Winthrop, Endicott, Bradstreet, Symonds, and Rawson; so also to a less extent to others. Land was the form of wealth in which the colony could most easily discharge its obligations. Its bestowment did not increase taxation or lessen revenue. Symonds and Leverett were also buried at the public expense.

In the early records of Plymouth colony entries appear to the effect that wages of officials should be paid in commodities, at certain rates, but the amount of wages and the officers to whom they were paid are not specified. While in session, the magistrates were boarded and lodged at the public expense. To the contracts which were made with private parties relating to this, several references appear.¹ As in the other colonies, gratuities were bestowed as rewards for unusually prolonged or faithful service. In 1651 and 1652 a gratuity of £20 was granted to Mr. Collier, who had long been an assistant and did much public business. In 1659, because of his advancing age and his continued occupation with business, he was allowed a servant at the public expense.² In 1660 £10 were granted to John Alden, whose estate was small, but who for many years had devoted himself to the service of the colony.³ Among the propositions which were considered in 1665 was one to the effect that the governors should thereafter be allowed £50 or £60 per annum, and that the assistants — five in number — should receive £20 yearly and bear their own charges.⁴ The plan was not adopted. In 1673, however,

¹ Plymouth Recs. iii, 120; v, 38, 124; vi, 93.

² *Ibid.* ii, 169; iii, 14, 51, 74, 166.

³ *Ibid.* iii, 195.

⁴ *Ibid.* iv, 102.

the sum of £50 was granted to Governor Josiah Winslow, as "his sallery or gratuity . . . for this present year."¹ The form of this grant shows very clearly how gratuities developed into salaries. When the gratuity became the subject of regular annual grant, it was a salary. Not until about 1690 do we have proof that a salary system existed in Plymouth. In that year allowances were made to the governor, the deputy governor, the secretary, to each of the assistants, to the chief marshal and the under marshal.² The deputies, in Plymouth as elsewhere, had long received daily wages.

Reference to the other New England colonies will involve mainly a repetition of what has been stated concerning Massachusetts and Plymouth. In all of them the advance was through gratuities to salaries, and the sums involved were very small. The governor was the officer who first received a salary. Grants were also made after 1660 in Connecticut to the secretary, the treasurer, the deputy governor, the marshal. The records of New Haven refer only to definite annual grants to the governor and deputy governor. About 1670 £150 was the customary salary of the governor of Connecticut. The governor of New Haven never received more than £50 per year. The backwardness of Rhode Island in such matters is illustrated by a vote of the assembly in 1698.

This Assembly having considered the great charge and expense that our Honored Governor is daily at on the Colony's concerns, have enacted . . . that there shall be added to the Governor's sallary the sum of twenty pounds per annum, so that the whole sum shall be thirty pounds, to be paid out of the Generall Treasury upon demand.

The salary and other expenses of agents who were sent to England, were burdens which all the colonies had occasionally to bear. In a few cases such outlays were met by private contribution, but the agency came generally to be regarded as a public function, the cost of which must be met from the treasury of the colony.⁴ The object of such expenditure being remote, the colo-

¹ *Ibid.* v, 124.

² *Ibid.* vi, 245.

³ R. I. Recs. iii, 345.

⁴ Mass. Recs. ii, 162, 218; iii, 79; iv,¹ 65.

nists often met it with less willingness than they did other costs of government. But the expenditures of Governor Winthrop in procuring the charter of 1662 were met by a special rate for three years of a penny in the pound. We are told, however, that many were unwilling to pay Mr. Whiting for his services on behalf of Connecticut in 1686.¹ Rhode Island failed to pay all the expenses of Roger Williams, while a bill of John Clarke for services as agent in procuring the Rhode Island charter of 1663 remained unpaid when he died in 1676. Proof is lacking that it was ever paid. Repeated efforts were made by the levy of rates and the appointment of committees to secure the payment of this debt, but the independence of the towns, combined with general indifference, proved stronger than the sense of public obligation.²

In the Puritan colonies the support of the ministry, the building and repair of churches and the support of schools, were regular objects of public expenditure. This burden, with the building and repair of roads and bridges, the building and repair of jails, the care of the poor and the support of local officials and courts, rested mainly on the localities. Laws making such expenditures obligatory abound. But on occasion supplementary grants were made from the colony treasury. By Massachusetts, in 1640, the ferry between Boston and Charlestown was granted to Harvard College. The original grant of money by the general court for the founding of the college was £400, one-half of which was to be paid when the work was finished. The payment of this grant, however, fell greatly into arrears. Later, grants were made for the support of the president, and for other expenses of the college, a few of them being in the form of land. But the college was chiefly supported by contributions from the four distinctively Puritan colonies and from England. In 1655 a project was broached for the establishment by similar means of a college at New Haven; but it came to nothing.³

Under the act of 1642 the towns of Massachusetts began their

¹ Conn. Recs. ii, 231; iii, 237.

² R. I. Recs. ii, 77-80, 131, 181, 514; iii, 22; Arnold, i, 313.

³ Mass. Recs. i, 183, 304; iv,¹ 30, 91, 178, 186, 312, and many later entries stating the grants of salary to the president; Quincy, *History of Harvard College*, i, 22, 27, 31; Clews, *Educational Legislation and Administration of the Colonial Government*.

expenditures for elementary and grammar schools, the same policy being followed in the other three colonies. Special efforts were made for the founding of a colony grammar school at New Haven, the general court conditionally appropriating £100 for the purpose. But this scheme did not prosper. Massachusetts occasionally made grants of land for the endowment of grammar schools, and Connecticut, in 1672, set apart six hundred acres of land in each to be used for this purpose.¹ In 1671 the general court of Plymouth voted to devote the revenue which arose from fishing at the Cape to the support of a free grammar school at the town of Plymouth. With this fund a school was soon started. In 1678 a grant of £10 was made toward the support of a school at Rehoboth. Grants came regularly to be made out of the fund from the fishery, both to the schools in these towns and to one in Duxbury.² The support of both the grammar and the elementary schools continued to be mainly a local charge. Towns which failed to maintain them, as required by law, were liable to fine. Of activity on the part of the colony government in Rhode Island in support of education, we hear nothing.

For the purposes of the present discussion it is not necessary to refer at greater length to local revenues or expenditures. The chief objects of colonial expenditure have been sufficiently reviewed. In addition service was rendered to the colony by messengers who were sent to the Indians or to other colonies, by persons who furnished entertainment or means of conveyance for officials or agents of the colony when in the public service, by those who assisted in emergencies like that of the hue and cry, by laborers on public works of all kinds. An instance of a large extraordinary payment is that which was imposed on the River Towns by the purchase of Saybrook. In Massachusetts a clergyman or magistrate was occasionally paid a sum for answering some heretical publication or producing a specially valued book. The services of the clergy as advisers or of others in preparing codes of laws also called for special recognition.

Payments from the colony treasury had therefore to be made

¹ New Haven Recs. ii, Index under Education and Schools; Conn. Recs. i, 554; ii, Index, Schools.

² Plymouth Recs. v, 107, 259; vi, 19, 31, 81, 102; xi, Index, Schools.

each year in small sums to a considerable number of individuals who, taken together, had performed a large variety of miscellaneous services for the public. The general courts, however, were not in the habit of passing annually a single itemized appropriation act, as came to be the custom in some of the provinces. Scattered through the court records, particularly of Massachusetts, appear special orders for the payment of sums to a designated individual and for a specific service. These orders were often framed in response to petitions. John Ruddock petitions for payment for the services of himself and horse on a journey on behalf of the colony to Connecticut, and payment is ordered.¹ Specific sums are granted for meals and lodgings of magistrates, deputies, or governor's men, as the case might be.² Payments are ordered in similar form for arms and ammunition. Salaries and wages, not only of officials but of those who are engaged on building or repairing a prison, a fort, or other public structure, are usually stated in precise form. The general assembly of Rhode Island in May, 1664, for example, ordered four payments, each for a distinct and specific service. More than twenty such payments were ordered during the session of October 26, 1670.³ Entries of this kind are not so common in the records of the other corporate colonies, but such fragments of treasurers' accounts as have been preserved indicate that payments were made in the same specific form.⁴

In many, if not most, cases the objects for which rates were to be expended were not definitely stated in the orders for their levy. The purpose of the regular annual rate was very often stated to be the payment of the debts of the colony. When a rate was levied for a specific purpose, as the outfit of a military expedition, the fact was usually stated in the order.

In the corporate colonies the official who had immediate charge of the revenue from all sources and of its expenditure was the treasurer. As there was no private or territorial revenue, distinct from that which went into the public chest, the office of receiver general does not appear. In the case of the Massachu-

¹ Mass. Recs. iv, 191.

² *Ibid.* ii, 116, 117.

³ R. I. Recs. ii, 51, 365.

⁴ See especially the Records of Plymouth.

setts company the office of treasurer existed in England. He was there annually elected by the general court of the company. He continued to be so elected after the removal into Massachusetts, and the same was the practice in all the other corporate colonies. William Pynchon was the first treasurer of the colony of Massachusetts of whom we have record, though we do not know when he was elected.¹ In September, 1634, William Coddington took the oath of office as treasurer. He was succeeded in 1636 by Richard Dummer, and in 1637 by Richard Bellingham. Bellingham was the next year chosen an assistant, but whether he was continued in the office of treasurer, the record does not state.² Both Richard Russell and James Russell held the two offices at the same time.³ But no record of another election of treasurer appears until 1640, when William Tyng was chosen. He was annually reelected until 1645, when Richard Russell was chosen in his place.⁴ The latter also was annually reelected till his death in 1676, probably the longest tenure of the same office in the history of Massachusetts as a corporation. In 1677 Captain John Hull was chosen treasurer, holding the office until 1680, when James Russell, the son of the former treasurer, was elected as his successor and continued in the office until the dissolution of the corporation.⁵ In Plymouth Miles Standish held the office from 1644 to 1656. He was then succeeded by John Alden, who served for three years. After that Constant Southworth was annually reelected until 1678, the year of his death.

In the other colonies of New England the office of treasurer was among the earliest which were created.⁶ In all cases he was chosen in the court of election. His duties were to issue warrants for the collection of taxes, to receive and keep the public revenue, from whatever source it came; and to pay it out under order from the general court or from magistrates to whom such authority might be delegated. According to the terms of Mas-

¹ Mass. Recs. i, 136. In 2 Mass. Hist. Colls. viii, 228, are the accounts of Pynchon as treasurer, rendered in 1636. They are for 1632-1633 and part of 1634.

² Mass. Recs. i, 129, 175, 195.

³ *Ibid.* iv,³ 417; v, 27, 77, 265.

⁴ *Ibid.* i, 288, 333; ii, 97.

⁵ *Ibid.* v, 131, 265.

⁶ Plymouth Recs. i, 48; xi, 7; Conn. Recs. i, 12; New Haven Recs. i, 51; R. I. Recs. i, 148, 197; Mass. Col. Laws, 1887, p. 196.

sachusetts law no disbursement could be made except under the authority of some law, order, or settled custom of the general court or assistants. The same was true in all the corporate colonies. In their case there could never be any doubt that both the exclusive power to appropriate revenue and to direct its expenditure belonged to the general court. The treasurer was not under a divided control, as was often the case in the provinces, but was the servant of the general court.

In all the corporate colonies the control of the legislature over the finances, and especially over expenditures, was maintained through a system of audit. This they inherited from the trading corporations in England. In Massachusetts the treasurer was by law obliged to account yearly, at the time of the court of election, to the general court or to such persons as it should designate. As early as 1644, and probably earlier, the same system was in operation in Plymouth. By order of 1638 the treasurer of Connecticut was forbidden to pay any bills which had not been "allowed" by the proper committees. By a law of 1647 the treasurer of the Providence Plantations was required to account to the general assembly.¹

The references, year by year, in the legislative journals to the appointment of committees of audit show that the obligation was maintained. By the Massachusetts court of election in 1640 Nathaniel Johnson and Captain Robert Sedgwick were appointed to join with the new treasurer, Mr. Tyng, in examining the accounts of the former treasurers. The accounts of Tyng were examined in 1644 and accepted.² Thus, in general, the custom continued through the century. Its continuance can be traced in a similar manner in the other corporate colonies. The oath, as administered to the treasurer of Plymouth in 1659, provided for the annual audit. In 1658 the town of Scituate in Plymouth colony petitioned the court that the accounts of the treasurer might be sent to the several towns. It was therefore ordered that town auditors might meet with the others for the purpose of examining his accounts, and report thereon to their towns.³ It is prob-

¹ Mass. Col. Laws, 1887, p. 151; Conn. Recs. i, 26; Brigham, Laws of New Plymouth, 77; R. I. Recs. i, 197.

² Mass. Recs i, 288; ii, 73, 79.

³ Plymouth Recs. xi, 142, 211.

able that this practice was continued after that date. In Rhode Island we hear of separate audits of accounts of the recorder, or secretary, and of the sergeant or sheriff.

But there is abundant evidence that the same faults which characterized the system of colonial administration as a whole, appeared in the audit of accounts. Long delays frequently occurred, sometimes the work was loosely done or not done at all. It was the same way with the collection of revenue, and delays in the audit were often caused by delays in collecting. In 1645 Massachusetts created the office of auditor general, with a salary of £30 per annum, and he was given very full powers with the purpose that he should cause exact accounts of the colony's finances to be kept and rendered.¹ Entries appear from time to time respecting his employment, alone or with the treasurer and others, in the examination of accounts. Committees of audit, however, were still appointed by the general court. In May, 1654, we find that, though a committee had been appointed the year before, the task of auditing the accounts had not been completed, because the constables of several towns had not yet collected all the rates. The audit was therefore postponed until the next session of court. The August session passed without reference to the matter, but in the October session a committee was appointed to examine the treasurer's accounts immediately after adjournment, so that the report might be published for the satisfaction of the colony. In November of the next year an order was passed that constables should clear their accounts with the treasurer annually by May 1st. The office of auditor general was apparently found not to be so useful as it was expected to be, and in 1657 it was abolished.² Thenceforward its duties were performed by the treasurer in conjunction with annual committees of audit.³

The assembly of Rhode Island in May, 1670, after struggling with protracted delays in the payment of rates, and consequent inability to pay the debts of the colony, passed an act and ap-

¹ Mass. Recs. ii, 141, 148, 162, 226.

² *Ibid.* iv,¹ 186, 202, 247.

³ References to the appointment of such committees abound in volumes iv² and v of the Massachusetts Records.

pointed a committee for the general audit of accounts.¹ The powers and procedure of the committee were set forth with unusual fulness. They were ordered to extend their inquiries at least as far back as 1664, and to include the rates which were levied to defray the cost of the charter. All who had claims against the colony were instructed to apply to them. If the account of any town was found defective, the auditors should order the collection of its deficit. At first the committee, which consisted of four persons chosen, according to Rhode Island principles, equally from the four towns, was prohibited from acting except with the unanimous consent of its members and in the presence of all. The member from Providence stayed away or otherwise hindered proceedings until, in October, the assembly was forced to drop the requirement for unanimity of consent. Later entries indicate that some progress was made by the committee, but we do not know whether or not its work was ever completed.

HERBERT L. OSGOOD.

¹ R. I. Recs. ii, 303, 358.

THE AMERICAN POLITICAL SCIENCE ASSOCIATION.

THE interests of political science, political economy, and history are so closely related that an attempt wholly to separate them, or to pursue their study as absolutely independent subjects, would be as practically impossible as it would be undesirable. Of the relation between history and political science it has been said by the late Sir John Seeley that politics without history has no root, and that history without politics has no fruit. The connection between economics and politics is, if anything, more intimate. Without the information that the study of economic principles and of economic history affords, the political scientist is unable either to explain many of the processes of political growth or wisely to determine lines of public policy. Upon the other hand, deprived of the knowledge furnished by the scientific study of the mechanism and methods of operation of governments, the economist finds himself insufficiently informed either correctly to analyze past and existing economic conditions or satisfactorily to devise the means by which the truths that he discovers may be made of practical advantage to mankind.

And yet, intimate as are these relationships, the field of political science is one that may be clearly distinguished from that of history as well as from that of economics, and the topics which the field includes, in order to be treated adequately, need to be studied as distinct subjects of inquiry.¹ It is true that to a very considerable extent the phenomena dealt with by the historian, the economist and the political scientist respectively are the same, but each examines his material from a different standpoint. The historian has for his especial aim the determination and portrayal of processes and stages of human development. With economic and political interests he is concerned only in so far as it is necessary for him to understand them in order to explain the move-

¹ The establishment of this *QUARTERLY*, in 1886, naturally raised the same questions which are here discussed, *viz.*, the interdependence of all the social sciences and the existence of a distinct science of politics. See Munroe Smith, "The Domain of Political Science." *POLITICAL SCIENCE QUARTERLY*, vol. i, p. 7.
— EDS.

ments he is studying. So also with the economist. His primary interest is in the ascertainment of the principles that control the production, exchange and distribution of wealth; and he finds it necessary to enter upon political ground only in so far as government has an influence upon economic conditions, either by reason of its cost, the economic security that it gives, or the manner in which it directly interferes, or may directly interfere, in the regulation of the industrial interests of the people. Thus, since neither the historian nor the economist is primarily interested in the study of matters political, it is necessary, in order that these matters should receive adequate scientific treatment, that they should be studied by those whose special interest in them is upon their political side.

Comprehensively stated, then, political science has to deal with all that directly concerns political society, that is to say, with societies of men effectively organized under a supreme authority for the maintenance of an orderly and progressive existence. Restrictively stated, political science has to deal primarily only with those interests or phenomena that arise because of the existence of political relations.

The definite field thus marked out for the political scientists is divisible into three parts. First, there is the province of political theory or philosophy, the aim of which is the analysis and exact definition of the concepts employed in political thinking, and which thus includes the consideration of the essential nature of the state, its right to be, its ends, its proper functions and its relation to its own citizens, and the nature of law. Secondly, there is the domain of public law, including as its subdivisions constitutional, international and administrative law. Thirdly, there is the general study of government, its different forms, the distribution of its powers, its various organs — legislative, executive and judicial, central and local — and the principles governing its administration. The subdivisions of these larger subjects readily suggest themselves. Furthermore, all these topics, chief and subordinate, of course lend themselves to theoretical, descriptive, comparative or historical treatment, and nearly all involve, or at least lead up to, the discussion of practical problems of government.

The foregoing description of political science is sufficient to in-

dedicate not only the propriety, but, in the interest of scientific progress, the necessity of recognizing the study of matters political as an independent discipline. Within recent years this recognition has been increasingly extended in this country, as has been especially shown in the creation in our colleges and universities of departments and chairs of politics as distinct from those of history and economics. Not until December 30, 1903, however, did this recognition lead to the establishment of a political science association whose exclusive interests should be political in character. Upon that date there was established at New Orleans, Louisiana, at the time when the American Historical and American Economic Associations were holding their annual meetings in that city, an association whose title is "The American Political Science Association" and whose object is, as its constitution declares, "the encouragement of the scientific study of politics, public law, administration and diplomacy."

The need for such an association as this, which should do for political science what the American Economic and American Historical Associations are doing for economics and history respectively, had been felt for a number of years. Direct action leading to its establishment was not taken, however, until December 30, 1902, when, at a meeting called primarily to consider the feasibility of creating a society of comparative legislation, there was suggested and discussed the necessity for a national association that should have for its sphere of interests the entire field of political science. The outcome of this discussion was the appointment of a committee of fifteen representative political scientists which was empowered to enter into communication with such individuals and associations as should be thought likely to be interested, with a view to discovering, if possible, how general was the demand for a new association.¹ As the result of its in-

¹ The composition of this committee was as follows: J. W. Jenks (Chairman), Cornell University; Simeon E. Baldwin, New Haven, Conn.; E. Dana Durand, Washington, D.C.; J. H. Finley, New York City; W. W. Howe, New Orleans; H. P. Judson, University of Chicago; M. A. Knapp, Washington, D.C.; C. W. Needham, Columbian University; P. S. Reinsch, University of Wisconsin; L. S. Rowe, University of Pennsylvania; F. J. Stimson, Boston; Josiah Strong, New York City; R. H. Whitten, Albany, N.Y.; Max West, San Juan, Porto Rico; W. W. Willoughby, Johns Hopkins University.

vestigation, this committee found existing, among those primarily interested in the scientific study of matters political, an almost unanimous demand for the establishment of a new national association that should take the scientific lead in all matters of political interest, encouraging research, aiding if possible in the collection and publication of valuable material, and, in general, advancing the scientific study of politics in this country. An opinion, equally general, was found to exist that the new association, if and when established, should maintain the closest and most harmonious relations possible with the American Historical and American Economic Associations, and, whenever possible, hold its annual meetings at the same times and places with them. Such a cooperation, it was declared, would be beneficial to the two older bodies and vital to the new one.

Upon these facts being presented at a meeting of those interested, in the Tilton Memorial Library of Tulane University, December 30, 1903, there was established, as has been said, The American Political Science Association. As its first president was elected Dr. Frank J. Goodnow, professor of administrative law in Columbia University. As vice-presidents were elected President Woodrow Wilson,¹ Professor Paul S. Reinsch of the University of Wisconsin, and Hon. Simeon E. Baldwin of New Haven. Professor W. W. Willoughby of Johns Hopkins University was elected as the secretary and treasurer. Associated with these officers in the government of the association there were elected the following members of an executive council: Andrew D. White, ex-ambassador to Germany; Jesse Macy, professor of political science, Iowa College; H. P. Judson, professor of political science, University of Chicago; L. S. Rowe, professor of political science, University of Pennsylvania; Albert Shaw, editor of the *Review of Politics*; Bernard Moses, professor of political science, University of California; J. A. Fairlie, professor of administrative law, University of Michigan; W. A. Schaper, professor of political science, University of Minnesota; C. H. Huberich, professor of political science, University of Texas; and Herbert Putnam, Librarian of Congress.¹

In order effectively to cover the whole field of political science,

¹ Declined.

the association expects to distribute its work among sections, each of which will devote its especial attention, respectively, to international law and diplomacy, comparative legislation, historical and comparative jurisprudence, constitutional law, administration, politics and political theory.

The association, as such, according to a provision of its constitution, will not assume a partisan position upon any question of practical politics. This means, of course, that, though at its annual meetings and in its publications it will give the freest opportunity possible for the discussion of current questions of political interest, it will not, as an association, by a resolution or otherwise, commit itself or commit its members to any position thereupon.

Any person may, upon application to the secretary, become a member of the association. The annual dues are three dollars. By the payment of fifty dollars one may become a life member, exempt from annual dues.

By those who have been most active in its establishment, it is declared that this new association is intended and expected to attract the support not only of those engaged in academic instruction, but of public administrators, lawyers of broader culture, and, in general, of all those interested in the scientific study of the great and increasingly important questions of practical and theoretical politics. Affiliated with the American Historical and the American Economic Associations, it is asserted that a trinity of societies has been created that will be able to assume and maintain a leadership in these allied fields of thought that can be subject to no dispute. It is believed that, just as the establishment of the two older of these bodies marked the beginning of a new period in the scientific study in America of the subjects with which they are concerned, so the creation of the American Political Science Association will, in years to come, be looked back upon as at once indicating the definite recognition of the fact that political science is a department of knowledge distinct from that of the other so-called social sciences, and as marking the commencement of a new period in the scientific study and teaching of matters political in the United States.

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THE ADMINISTRATIVE LAW OF THE UNITED STATES.¹

THE publication of a book upon the administrative law of the United States, particularly when that book appears under the title *Administrative Law*, is a sufficiently noteworthy event to justify, if not to demand, extended comment. Such comment is particularly necessary when the book comes from the pen of a member of the Harvard Faculty of Law, which has not heretofore shown an active interest in the study of public law except in so far as that law has been studied in close connection with the protection of private rights. The appearance under such auspices of a thoroughly legal book on the subject of administrative law is evidence of the fact that there is an administrative law in the United States which is sufficiently important to demand treatment from those who are responsible for the instruction of students who intend to become practising lawyers.

Mr. Wyman's book arouses in the mind of the reader mingled feelings of admiration, gratitude and regret: admiration for the way in which most of the work has been done and gratitude for the vast mass of information which has been made accessible to the students of the distinctly legal side of administration; regret that the author should have so narrow a conception of his subject and that a certain lack of political insight or an ignorance of fundamental principles of political science should have befogged his mind in treating subjects which, to be treated successfully, must be set forth with clearness.

The book seems to be based upon the theory that there can be no administrative law where there is not a thoroughly centralized administration — a hierarchy of superior and inferior officials in which the superior officials have the right to direct and supervise the actions of those inferior to them. Administrative law is defined as consisting "of those rules which govern the executive department in the administration of the law." It will be noticed that this definition does not include the law governing all the officers who are to execute the law, but only the law governing the executive department. This use of the words "executive department" is obviously deliberate; for the whole

¹ *The Principles of the Administrative Law governing the relations of Public Officers.* By Bruce Wyman, of the Faculty of Law in Harvard University. St. Paul, Minnesota: Keefe-Davidson Co., 1903. — x, 641 pp.

treatment of the subject seems to be based on the theory of the separation of powers — a theory which indeed has an important influence on the position of the different departments of government, but which does not affect the position of any administrative officer except the chief executive. Thus, in the chapter on The Position of the Administration, it is said:

No action of the administration as an administration is subject to the inquiry of the law; since the administration in the execution of its functions is conceived as the representative of the state with the immunities of the state itself [p. 24]. . . . That the state is not responsible, as an elementary principle has many applications in the practical administration of the law. . . . The consequence most noteworthy of all in this for administrative law must be apparent to any observer of these conditions. The administration has a free hand to work out its own devices; but the administrative officer has no freedom of action, except action within the law. Since the administration is irresponsible the officer must be responsible [p. 31].

The position taken by our author is of course an advance upon that taken by Mr. Dicey, who says, in his *Law of the Constitution*, that the scheme of so-called administrative law is opposed to all English ideas. In fact, Mr. Wyman repudiates, and properly repudiates, the Dicey doctrine when he says:

Political science is a universal science. However diverse in its manifestations, governmental power is the same in last analysis. Accordingly there is no power exercised in any government which is not to be found in some form or other in every government. In every government there must be a department charged with the enforcement of the law. In the law of every state, therefore, there must be a body of rules in relation to the action of that department. In that sense, at least, there must be an administrative law in the law of every state [p. 3].

For the rather grudging recognition of administrative law thus made, all students of the subject ought, of course, to be thankful; but no one who believes that the boundaries of administrative law are as wide as is the function of executing the law can refrain from protesting against the view that administrative law deals merely with what is known under our system as the executive department; and no one who has this belief can refrain from stating his objections to the narrower view.

To begin with, if we are to adopt our author's conception of administrative law, we must admit that administrative law is either non-

existent in our state systems of public law, or that it governs merely the relations of the executive department which, on account of the general character of the state administrative system, are comparatively unimportant. For, as Mr. Wyman shows in an admirable comparison of the federal and state systems, while we have a highly centralized administrative system in the federal government, we have a very decentralized administrative system in the states. Does the fact that the administrative system of the states is decentralized make it unnecessary that the state governments shall exercise some of the powers which the federal government exercises? If the state governments must in the nature of things exercise those powers, does the fact that the system of administration is decentralized deprive the rules of law governing the exercise of those powers of their character as rules of administrative law?

Further, the insistence upon the irresponsibility of the administration, which is derived from our theory of the separation of powers and which, under other systems of public law, is not by any means one of its necessary attributes, tends to produce serious error when we come to consider the position of the administration in a decentralized administrative system. Thus, for example, it is the universal rule of our state law that certain of the authorities provided for the execution of the law and for the discharge of what are called administrative functions are incorporated; and this is done for the purpose of depriving the administration, in so far as its organs are incorporated, of its attribute of irresponsibility. Counties, towns, cities and school districts are all made corporations, liable to suits based on contract and sometimes to suits based on the tortious acts of corporate officers. Neither the legislatures nor the courts permit the principle of the separation of powers to be made use of to accord to a host of state administrative authorities a position of legal irresponsibility. Indeed it has been held quite commonly that the principle of the separation of powers does not govern the relations of the local administrative authorities in the states.

Mr. Wyman's narrow conception of administrative law vitiates also some of his conclusions on the position of administrative authorities, using the words in what would seem to be their proper sense. Thus he regards as bad law a decision of the Supreme Court of the United States in the case of *United States vs. Duell*, 172 U.S. 576. In this the court held constitutional a statute giving an appeal on the merits from a decision of the commissioner of patents to the court of appeals of the District of Columbia, instead of to the secretary of the interior. Our author says:

It may well be asked with respect: How can there be a more flagrant example of the subordination of one of the great departments to another than is seen in this case, where a judicial court is put over an administrative office, where the action of an executive body is subjected to the revision of a judicial body; for what else can this process of appeal amount to? If this be allowed in this case it is difficult to see why it must not be permitted in every case. And the end of a series of statutes might be to make the chief justice and the associate justices of the United States pass upon the propriety of every action of the president and cabinet of the United States — a *reductio ad absurdum* [p. 84].

Such reasoning as this is based upon a conception of the position of the administration which would seem to be quite foreign to our administrative history and custom. Originally, before the federal administration had become so centralized as now, one of the common means of determining customs cases, for example, was by suit against the collector of the customs, upon which mixed questions of law and fact, decided in the first instance by the collector, were submitted to the courts acting with a jury. Again, the administrative law of the states has been in the past, and is now, full of instances where questions of this character, when decided by administrative officers, are subject to judicial review. Take, for example, the jurisdiction of the courts over the subject of nuisances. The courts have the right in some instances, in both direct and collateral actions, to review the determinations of administrative officers that certain concrete conditions constitute a nuisance. In the state of New York, as well as in other states, provision is made by statute that the determination of tax assessors as to the value of property assessed by them shall be subject to judicial review; and in the state of New York a general provision of the code of civil procedure gives to the courts the power, on writ of *certiorari*, to quash the determinations of administrative officers not merely because they are contrary to law, but also because they are opposed to the preponderance of evidence.

In a word, the conception of the irresponsibility of the administration is really foreign to our law except as regards the executive head of the government, *i.e.*, in the case of the federal government, the president, and in the case of the state government, the governor. Acts of the lower authorities have in various ways, sometimes as the result of positive statute, sometimes as the result of judicial decision, been made subject to the revisory power of the courts. The fear that the recognition of the power of Congress to subject to the control of the courts decisions of inferior administrative officers will result in giving to the

courts the power to pass on the propriety of every action of the president and his cabinet is a *reductio ad absurdum*, but not in the sense in which Mr. Wyman uses these words.

But while one cannot help regretting that Mr. Wyman has so narrow a conception of the extent of administrative law, one cannot but be grateful to him for the thoroughness with which he has done the work he set out to do. Nowhere is there to be found so exhaustive a collection of the decisions of the courts, attorneys-general and heads of the various departments with regard to the powers and duties of the administrative officers of the federal government. Furthermore, much more has been done than merely to collect the cases. There is not only, at the end of each section, a long list of cases bearing upon the subject under discussion, but, where a case is regarded as important, the text sets forth at length the facts and a large part of the opinion. The book is therefore to some extent available for the same purposes as a collection of selected cases.

One must also feel gratitude to Mr. Wyman for his admirable exposition (in the chapters on the powers, the duties, the membership, the organization and the theory of the administration) of the characteristics of the administrative system to which attention is primarily directed. Particularly to be noticed is the chapter on The Theory of Administration. Herein is set forth, in all its legal aspects, the theory of the centralized administrative system of the federal government. Attention is called to the necessity, in such a system, of recognizing that the superior officers may delegate the exercise of their powers to their subordinates. Court decisions, opinions of attorneys-general, decisions of heads of departments and circulars of instructions are all marshalled to show how, owing to the recognition of this principle, "centralism" as the author calls it, does its work.

As a matter of practical government the performance of centralized administration seems prodigious. The secret of the success is system. System — in the subordination of officers inferior to superior; system — in the coördination of officers of the same grade for division of labor. The subordination is necessary, so that all may be overseen from step to step. The result in administration is the possibility of immediate action. Whatever any superior wishes done, he may command it done with definiteness by the most remote inferior. Matters of routine are done at the bottom; only where they involve extraordinary action are they referred to the top; and yet in each case the theory is preserved that all action proceeds from the top. The matters of routine are done by every officer of the same grade in coördination. The principle is

well understood that ten men properly coördinated upon lines of exact specialization or precise division can do the work of fifty acting as separate individuals. The effectiveness of a centralized administration is therefore no untested theory; it is a demonstrated fact [p. 212].

Again he says:

Where a superior officer has a discretionary power, any action by him in pursuance of that power may create a duty for his inferior officer of such nature as he may designate in his order. If by this process a superior officer lays an explicit command upon his inferior officer, the result is that the inferior officer is now under a ministerial duty which he must perform according to the tenor of the command. This in a simple case is the working out of administration. The usual processes of administration are more complicated, because one such step is added to another such step. For example, the head of a department gives a general order to the chief of a bureau; the result is that it is the ministerial duty of the chief of bureau to act, but what action he shall take is within the discretionary power allowed to him by this general order. He in turn gives a special order to the chief of some division; the same process recurs; it is the ministerial duty of the chief of division to act, but what orders he shall give are within his discretion. The last step is the designation by the chief of division of some special clerk to do some special act; here, at last, the duty is ministerial, the clerk must do that act. In brief, this is the process of administration, the continuous process of the action of a superior creating duties for an inferior [pp. 215, 216].

It is remarkable — and to be regretted — that in this admirable treatment of centralized administration space should be devoted to the state systems, except by way of contrast. For what is said (*e.g.*, in chapters vii and viii, on *The Organization of the Administration* and *The Theory of Administration*) with regard to the state systems tends to convey the impression that the principles applicable to the federal system are applicable to the state systems.

One of the greatest services rendered by this portion of the book is the extended treatment of the power of regulation possessed by the officers of the administration. It is said:

These rules are made by the executive itself in the course of administration to facilitate the enforcement of the law. In part these rules are written, then they are called regulations. In part they are unwritten, then they are called usages. The general result is a definiteness in usual administration. The situation that is found is this: When the law is

put upon the statute book it is not specific enough for administration. It requires further elucidation. This is the office of the legislation which is done by the administration. That is, the administration first of all puts the law in shape for convenient administration. The force of these regulations that thus accompany the statute is the legal problem. The general conception is that these regulations have the force which any governmental action has. This is usually summed up, in the ordinary decision, by the statement that these regulations have the force of law . . . The regulations, upon examination of the situation, will be found to be as multifarious as the statutes upon which they depend. These regulations represent the exercise of a very considerable power on the part of public officers in their relation with the public. And they serve a purpose in the administration not commonly appreciated. There are innumerable instances of these regulations. The regulations, directions, circulars, instructions, forms, promulgated by the executive department confront the citizen in all his dealings with the government. So far as these are all put forth in due course of administration the citizen must conform to them. This is the chief office, indeed, of the regulation — to reduce administration to a regular system for the ordinary case that arises in administration [pp. 285, 286].

It is shown further that

with or without action of Congress regulations have the force of law when founded upon, first, the President's constitutional powers as commander-in-chief of the army, or, second, the administration of statutes by the President which had been enacted by Congress in reference to the military forces. All of these regulations have the same validity [p. 287].

A further basis for these regulations is found in the power of direction which, because of the centralized character of the federal administrative system, each head of a department possesses. Thus it is said:

A regulation is an order, in that it is like any act done in administration. Wherever a superior gives an order to the inferior, the simplest form in administration is seen — the specific order. Whenever a superior with two inferiors gives to each the same order, the simplest form of the regulation is seen — the general order. After that, between a general order spoken for two and a general order printed for two thousand, no distinction exists. The power to issue a regulation over all the officers in an office is a consequence of the power to issue any single order to any single officer; all this results from the theory of administration which gives the superior full direction over his inferiors in any way that may seem to him fit [p. 304].

Attention is, of course, called to the rules that these regulations may not be contrary to law and that, if regulations not justified by the statute are as a matter of fact issued by an administrative officer, the courts will refuse to enforce them. But no really satisfactory explanation is offered as to the reason why, under a constitution based upon the principle of the separation of powers, administrative regulations which have the force of law are regarded by the courts as constitutional. Mr. Wyman, following in this respect the courts, advances the theory that these regulations are not legislative:

This regulation, it thus appears, is not legislation; it is administration. The authority for all regulation is to be found in the executive department itself. This is the part of the function of the administration to prescribe methods for the enforcement of the law. This is an inherent power, then, the employment of a method incidental to due administration. Statutes are by necessity couched in general terms, but these general terms carry with them by necessity all powers requisite to accomplish their object. This is so whether the law that goes before indicates that regulation is to follow after or whether the law is silent as to regulation. Often a body of regulations is framed by the head of an executive department upon no other basis than that the matter was given over to be administered under his direction. All of these regulations, if they are no more than administration, have the force of law [p. 291].

Such a theory may properly be held with regard to regulations issued in the exercise of the power of direction, affecting none but officers, and affecting these only when acting in their official capacity, but it is difficult to believe that regulations which determine the rights and duties of citizens or of officers when not acting in an official capacity are mere matters of administration. The only ground upon which such regulations can be justified, in a country whose constitution vests the legislative power in a legislature, is the same ground upon which is based the doctrine of the state law which recognizes that local corporations and officers may issue local ordinances when thereto authorized by the legislature. That ground is that the doctrine of the separation of powers must be interpreted in the light of our history. It follows then, in the case of the president and governor and other executive officers, just as in the case of the local corporations, that if it was, at the time of the adoption of the constitution, the custom of the government to recognize such powers of regulation as vested in such authorities, the constitution must be construed as intending to permit these powers to be exercised in the future as they had been in the past.

Regret has already been expressed that a certain lack of political insight has made certain portions of the work before us unclear. Mr. Wyman's tendency is to regard the theories at the basis of our system of government, as they have been formulated by our courts, as absolute political principles of universal applicability. Thus it is said:

That the state cannot be sued seems at first a technical result — that the law has tied its own hands and so has lost its supremacy. But does it not, upon consideration, seem an untechnical doctrine; for is it not brute force that dictates it rather than subtle logic? The state is sovereign not because it may be, but because it must be; the citizen is subject, not because it is law, but because it must be so. These things are not possible in theory: to have a state without a sovereign or a sovereign without subjects. However complex the state, somewhere there must reside sovereignty; whatever the form of the government, all must be subjects of that sovereign, however free they may be. These things must be so, in fact, because they are based upon the power, somewhere, without which the whole system would be disintegrated. In last analysis there are reasons for the rule that the sovereign is irresponsible. Therefore, this is a rule without exceptions [p. 30]. . . . No proposition of administrative law is so undisputed as this, that the government is not liable for torts in the course of governmental action; and no rule of administrative law is so without exception as this. As a matter of theory it is impossible to conceive of the state as a private principal subject to the liabilities of the law of private agency; the truth is that this is another realm, this is a public principle, the law of public agency governs; and according to that public law it is as impossible for the state to authorize wrong-doing as it is inconceivable that the state should do wrong itself [p. 35].

Now while it may be the rule of law that the federal and state governments may not be sued without their consent and that, when they consent to be sued, they never are liable for the tortious acts of their agents, it is still true even by our own law, as has been pointed out, that the municipal corporations, which are merely incorporated parts of the administration, may be sued not only in contract but for certain kinds of torts; while foreign systems of law, like those of France and Germany, permit great freedom of suit, both on contract and in tort, against the central government.

Again Mr. Wyman, notwithstanding his in other respects accurate description of the position and operations of the federal government of the United States, has apparently transferred to the relations of that government ideas derived from a study of our general system of law concerning the control of the courts over the administration. One of

the points upon which he lays great emphasis, as has already been indicated, is that while the central administration, as representing the government, is irresponsible before the law, the administrative officers of that government are subject to a complete responsibility. At any rate, the responsibility of the officers of the federal government is not clearly distinguished from that of officers of the state governments.

As a matter of fact, however, for one reason or another, probably because of the great influence of the executive departments on federal legislation, Congress has so limited the power of the United States courts to interfere with the action of the administrative officers of the federal government, even where such action is violative of private rights, that in many instances the individual who believes that his rights are violated by the officers of the federal government either has no remedy or can discover one only through the exercise of the greatest ingenuity. Thus, for example, the Judiciary Act does not confer generally upon the courts of the United States the power to issue to administrative officers of the federal government the writs of *mandamus* or *certiorari* — writs by means of which the state courts are continually exercising a control over the acts of state officers. The only United States court which has power to issue such writs, as a part of its original jurisdiction, to officers of the federal government, is the court of the District of Columbia, which has a territorial jurisdiction limited by the boundaries of the district. This omission in the Judiciary Act of itself tends to give to federal administrative officers an immunity from judicial control which, though not ordinarily appreciated, is of the greatest importance. The case of *Ex parte Vallandigham* (1 Wallace 243) shows what this omission has sometimes meant. In this case Vallandigham was sentenced to imprisonment during the war by a military commission. The privilege of the writ of *habeas corpus* had been suspended, and Vallandigham applied to the United States courts for a writ of *certiorari*, but this was denied on the ground of lack of jurisdiction, although there was no other adequate remedy.

Again, Congress has sometimes vested in administrative officers a power of final determination, as in the acts forbidding the immigration into the country of certain classes of aliens, and this grant of power has been upheld by the Supreme Court in a number of cases. Again, Congress has taken away from the individual his common law remedies against the action of federal administrative officers: e.g., it has taken from the courts of the United States the right to issue an injunction to restrain the collection of taxes and has at the same

time relieved tax officers from liability to be sued in tort. Congress has, it is true, in some instances replaced the common law remedies, of which it has deprived the individual, by special remedies, some of which have been administrative and some of which have been judicial. But the legislation of Congress has in some cases made it very difficult to find a remedy by means of which to test the validity of official action; witness the method finally adopted to test the constitutionality of the recent income tax, where the courts were asked to issue an injunction on behalf of a stockholder to restrain a private corporation from paying the income tax, on the ground that such action would be a wasting of the resources of the corporation.

When we add to the weakness of the judicial control over federal officers the right generally accorded to them to execute the law without resort to the courts, as for example, in the collection of taxes and claims against officers of the administration, which right has been held by the Supreme Court in more than one case to be constitutionally vested in the administration by Congress, we at once perceive that we are in the presence of an administrative system which, from the point of view of the irresponsibility of its officers to the law, is quite a different one from the system which we find in most of our states.

This difference between the position of the federal officers and that of the state officer, with the resulting difference in the position of the federal and state systems of administration, our author does not seem to have appreciated; at any rate he has not brought it clearly before the reader.

Owing to these fundamental defects in the work, namely the narrowness of the subject treated and the failure to bring out clearly the peculiar and distinctive characteristics of the system of administration on which the attention of the writer has been concentrated, it must be said that the book is hardly one that can be used with advantage by the student of administration, unless he has already made considerable study of the subject. But to one who has given the subject some attention, the book will be a valuable one, as supplying information on a subject on which very little has been easily accessible.

Apparently, however, the book has not been written with the intention that it should be used as a text book for college or law-school classes. The appendix of forms for use in business with executive departments (such as the pension office, the accounting bureaus, the patent office, the land office and the offices having to do with the collection of the customs and internal revenue) would seem to indicate that the author's intention was to write a book for the legal profes-

sion. Indeed, he says, in his preface, that the appendix has been provided "that this book may be a manual for lawyers engaged in such matters." The fact that the appendix occupies at least two-fifths of the entire book would seem to show that it was the legal profession that the author had particularly in mind when he wrote his book, although we are informed that "this book is based upon an occasional course of lectures delivered in the law school of Harvard University." Whether the book will satisfy the needs of that rather small class of the profession which is occupied in conducting relations with the executive departments can be determined only by one whose technical knowledge of that sort of business is large.

Finally the hope may be expressed that some one may be induced to give to the whole subject of American administrative law the careful and thorough treatment which Mr. Wyman in his *Administrative Law* has given to the legal relations of the administrative officers of the federal government.

FRANK J. GOODNOW.

REVIEWS.

Autobiography of Seventy Years. By GEORGE F. HOAR. New York, Charles Scribner's Sons, 1903. — Two volumes; 434, 493 pp.

Senator Hoar's work, while in general a paragon of pellucidity, leaves nevertheless one distressing uncertainty in the reader's mind, and that is whether, in last analysis, it is the population of Eastern Massachusetts in general or the Boston Saturday Club or the Worcester bar that is to be regarded as the most perfect human embodiment of religious, moral, intellectual and political virtue. That no other aggregation of human beings in this wide world, past, present or future, has any place in the competition, will be obvious to the most casual reader of the volumes. Mr. Hoar places himself, with a genial frankness that disarms criticism, in the foremost rank of that band of ancestor-worshipping Massachusetts Puritans whose mission has been, and is, to imbue a sceptical world with some measure of their own unwavering conviction that the whole history of the United States, and probably that of mankind in general, has hinged principally upon their thoughts and deeds. The facts which elicit his most heartfelt expressions of gratitude to his Creator are, first, that he was born and reared of and among the Concord Puritans, and second, that his public life was passed in the service of Massachusetts. The manuscript diary of Bradford, the leader of the Plymouth Pilgrims, Mr. Hoar regards as "the most precious manuscript on earth, unless we could recover one of the four gospels as it came in the beginning from the pen of the evangelist." So much larger and more sacred bulks this product of an early Massachusetts Puritan's pen than any document of our merely national life, as for example, the Declaration of Independence!

Next in order to his ancestry and his state Mr. Hoar places his association with the Republican party as a ground for gratitude to God. He is as frank in avowal of his thoroughgoing partisanship in politics as in his avowal of ancestor worship and state pride. So profoundly is party fealty a part of the man that the most cynical reader will be touched by the real pathos of several allusions in which Mr. Hoar indicates his discontent with the recent imperialistic policy of the Republicans. He seems to feel that the time may be at hand when he must actually break his old party ties. But he is probably the only man in the United States that regards such a result as possible. The Senator

has often been a useful force making for conservatism within the party, but he has never been one of the great positive propulsive forces, and the stronger leaders of policy will doubtless in the present case, as in many an earlier one, bring him to realize that party rupture is a greater evil than the triumph of the projects he detests. The situation illustrates once more what never has been realized by any Massachusetts man, that her statesmen have never, since the Republican party became thoroughly coherent, been the dominant element in the party. Her policies and her men have striven in vain in the councils of the party with the policies and the men of the West. The philosophic idealism and sublime humanitarianism which characterized the régime of Sumner and Andrew, and of which Mr. Hoar is the living heir, never had any hold on the hard-headed Wade and Morton and Chandler, nor was it markedly present in Mr. Hanna, their successor. Massachusetts Republicanism during the war stood for abolition first and national integrity second; the Republicanism of the West reversed the order. During reconstruction Massachusetts Republicanism demanded negro suffrage as a right of the negro; the Western Republicans sought it frankly for the benefit of the party. The humiliation of Sumner by Grant marked with entire clearness the definitive triumph of Western ideals and Western methods in party policy. But Massachusetts and New England in general have been far more fertile than the West in the production of memoirs and other forms of literature concerning the history of those times, and the fiction has been perpetuated, as it appears throughout Senator Hoar's book, that the men of the East have really dominated the career of the party. Mr. Hoar's knowledge of the true source and support of the present imperialistic policy ought to contribute powerfully to the correction of this belief.

The enjoyment of Mr. Hoar's volumes can reach its maximum only after allowance has been duly made for the unswerving solemnity of the author's devotion to his ancestors, his state and his party. On each of these points the mellowness and joyous tone are wanting that pervade the rest of his work. The story of his legal practice, his travels and his political service abound in evidence that his appreciation of a joke is in general of the keenest and that he is quick to catch the full effect of those incongruities in things that make men merry. But more deadly seriousness never appeared in literature than that of Mr. Hoar in treating of one of the most ludicrous incongruities in our political history — the election of Benjamin F. Butler as governor of Massachusetts. That such a character as Butler should have been a product of Puritan stock, should have achieved distinction

and power in eastern Massachusetts, and should have stood high for years in the councils of the Republican party — these facts are hard enough to adjust to the good Senator's philosophy. That, in addition, despite the frantic warnings of Mr. Hoar and his associates in the Saturday Club and the Worcester County bar, the people of Massachusetts should have deliberately chosen Butler governor, is entirely beyond the fire test of the senator's equanimity. The great wave of inextinguishable laughter that swept over the country at the announcement of Butler's election is not recorded or suggested by Mr. Hoar. The incident contains for him no element of humor. He records it with unwonted gloom, and finds in it only two morsels of comfort: that the Democratic party was chiefly responsible for it, and that it did not happen again.

Mr. Hoar's chapters on the men and measures of Congress during his service, which has been continuous since 1869, furnish no important revelations of historic interest, but throw much useful light on minor matters in the inner workings of politics. His estimates of the public men with whom he has been brought in contact are interesting and almost invariably kindly. The cordial appreciations of many Democrats, especially Southerners, are evidence of the author's broader spirit. His anecdotes concerning Grant as President confirm the impression already given by Boutwell, John Sherman and others, that Grant was considerably stronger as a statesman than the public record of his political career would indicate. On one point in Grant's career, which involves also Senator Hoar's brother, then attorney-general, an apparently conclusive refutation of a disagreeable charge is given. It is demonstrated, by a comparison of the recorded times of the acts concerned, that the nominations of Strong and Bradley as justices of the Supreme Court could not have been determined by the purpose to secure a reversal of the first legal-tender decision.

Though Senator Hoar's qualifications as a historian are far above those of most men in the same walks of public life, his autobiography is by no means free from the sort of inaccuracies that seem inevitable in a busy man's "recollections." The Senator's partisan predilections seem responsible for most of the errors that occur in his volumes. Thus an obviously laborious effort to say something agreeable about General John A. Logan has led him to adopt as history some "spell-binder's" tale in the campaign of 1884. Logan, he says, when ordered to relieve Thomas of command at Nashville just before the great victory in December, 1864, found on reaching the army that Thomas's dispositions were all made to insure a triumph.

His [Logan's] generous nature disdained to profit by the mistake [of Grant] at headquarters and to get glory for himself at the expense of a brave soldier. So he postponed the execution of his orders and left Thomas in his command. The result was the battle of Nashville and the annihilation of Hood. Where in military story can there be found a brighter page than that?

In view of the facts of the case the Senator's query becomes a trifle ridiculous. According to the official records, as well as the narrative of Grant, Logan was ordered to Nashville from City Point on December 13. On the 17th he reported that he had got as far as Louisville and that "people here [are] jubilant over Thomas's success." The victory had been won on the 15th and 16th, and Logan turned back without going to Nashville at all.

Mr. Hoar's discussion of various phases of Southern politics discloses a degree of sympathy with the Southern whites that could hardly be anticipated. He actually confesses to a feeling of sadness on seeing the negro-ridden Louisiana Legislature in session in 1873 (vol. ii, p. 160). But such a feeling never for a moment modified his resolution to perpetuate at all hazards the conditions which made him sad. He declined, and still declines, to see any other principle underlying the course of the whites in overthrowing negro suffrage than a passionate desire for the supremacy of the Democratic party. His business, therefore, was to thwart this purpose in the interest of his own party. His position here is certainly intelligible; but his belief that there has not been and is not any important race question operative in the South is hardly creditable to his insight. Still less creditable to either his historical knowledge or his candor is his repeated assertion that the "suffrage was conferred upon the negro by the Southern states themselves" (vol. ii, pp. 159, 162). Not even in the most narrowly technical sense that Mr. Hoar's legal ingenuity can suggest is this true. The right of the negroes to vote in the Southern states was conferred by an act of the United States Congress, and the first exercise of the right took place under the immediate direction of United States army officers, in absolute disregard of existing statutes of every state concerned.

In conclusion may be quoted a passage which displays as well as any in the two volumes Senator Hoar's general bias in dealing with history and politics:

During the thirty-two years from the 4th of March, 1869, to the 4th of March, 1901, the Democratic party held the executive power of the country for eight years. For nearly four years more Andrew Johnson had a

bitter quarrel with the Republican leaders in both houses of Congress. For six years the Democrats controlled the Senate. For sixteen years they controlled the House of Representatives. There is left on the statute books no trace of any Democratic legislation during this whole period except the repeal of the laws intended to secure honest elections.

It is a little uncertain whether Mr. Hoar intends to include Johnson's four years in his total of thirty-two; but, leaving that aside, who that reads, and accepts without verification, this record of Democratic opportunity and inefficiency would suspect that during these thirty-two (or thirty-six) years the Democrats had the power to enact party measures — *i.e.*, controlled simultaneously the presidency and both houses of Congress — during precisely two years, 1893-95?

WILLIAM A. DUNNING.

Actual Government as Applied under American Conditions. By ALBERT BUSHNELL HART. New York, Longmans, Green and Co., 1903. — xlv, 504 pp.

This book is one which will arouse in the careful reader mingled feelings of satisfaction and disappointment. While the plan of the work is most excellent and the general execution leaves little to be desired, in clearness and accuracy of language and statement it falls far below the standard which the public have a right to expect from so prominent a writer.

The book is designed to fill a place not previously occupied by any of the numerous text-books upon American government. It is intended, the preface tells us, as "a college and upper high-school text-book" which shall not confine itself to a mere description of governmental organization, but shall present to the student American government — national, state and local — as a whole and in actual operation, including what it does as well as how it does it. Throughout the book these objects are kept in view, the emphasis at all times being upon practice rather than theory and upon the essential unity which underlies our governmental institutions rather than upon that division of powers between national government and states which occupies so large a place in most books on the subject.

The first one hundred and twelve pages of the book are devoted to a general discussion of the fundamental conditions and principles which lie at the base of American government; the physical features of the land, the character of the population, the personal rights of citizens

and aliens, the principles of the separation of powers and division of powers, written constitutions and their revision and amendment, suffrage and elections, the organization of political parties, including of course the caucus and nominating convention, the "machine," the "boss," and allied topics. The next fifty pages are devoted to state government, another fifty pages to local government, and a hundred pages to the national government. Having described how the governmental machinery is organized and how it works, the author devotes the remaining pages of the book to a detailed examination of the functions or operations of government, *i.e.*, to telling what the government actually does as distinguished from how it does it. The discussion of each large topic is preceded by a "brief account of how that particular agency or function came to be," and classified references to other works on American government are prefixed to each of the chapters, supplementing a general bibliography which is inserted at the beginning of the book.

A brief experience with this book in the class-room has led the reviewer to believe that at times theory has been unduly subordinated to practice. While, of course, the machinery of government is only a means to an end, a knowledge on the part of the student of both the fundamental features and many of the details of governmental organization is necessary if he is to understand clearly the actual operation of the system. To some extent the book fails, perhaps, to provide this necessary basis for the study of the government "in action," but of course this is a lack easily supplied by the teacher.

Severe adverse criticism is demanded by the all too frequent carelessness of language and statement, which at times degenerates into absolute inaccuracy and incorrectness. This is especially true of the earlier parts of the book, where propositions of constitutional law rather than of fact are often stated, and where one who is not a trained lawyer may easily go astray. An example of what is here referred to is found in the chapter devoted to The Individual and his Personal Rights. It is difficult to imagine a more loose, inaccurate and misleading discussion of the "privileges and obligations of citizenship" than is here found. It is said, for example: "In many respects the alien has the same duties and the same rights as the citizen; he must obey the laws and pay taxes, and all his rights he holds by temporary favor" (p. 19). This seems to say that, like the alien, the citizen holds his rights by temporary favor, not by constitutional grant, which is denied in the next sentence. If we substitute "but" for "and," the statement is still open to criticism, for the alien holds very substantial rights under

the constitution, rights of which the government may not deprive him so long as he is allowed to remain in the country. Again: "A great privilege is that of protection: no individual may take the property or injure the person of a citizen without a criminal responsibility" (p. 19). Obviously this is not a "privilege of citizenship" at all, but one which belongs to all persons alike, be they citizens, subjects or aliens. The same is true of other privileges enumerated in this section, as well as of the so-called "obligations of citizenship." As an example of the latter: "The citizen is held responsible to national, state and local laws" (p. 20). So is the alien. Without increasing the size of the book by a single line, a clear and simple account could be given of the fundamental constitutional rights of citizens and aliens and of their legal obligations, and occasion could be taken to emphasize the fact that in these modern days the importance of citizenship as a source of rights is far less than it was in the ancient world, when the person not a citizen was to a large extent not recognized as having rights — in other words, that the fundamental rights to life, liberty and property are to-day given to men as men and not as citizens.

It seems impossible to eliminate from the mind of the American historian the erroneous idea that "in the famous Dred Scott case it was held that a person of African descent could not become a citizen of the United States, or a citizen of a state, in the sense of the constitution of the United States" (p. 16). Inasmuch as only four members in a court of nine expressed any opinion upon this question, and one of them held that a free negro could be a citizen, it is difficult to understand the persistence of this mistake, unless it be due to the fact that those who make it have never examined the case itself.¹

It is doubtful if the brief and not very clear discussion of sovereignty given in chapter iii will in any degree enlighten a student who approaches the subject for the first time. Clearly erroneous is the statement that "in England the ultimate legal power to make and alter constitutions rests in the peers of the realm and the constituencies of the House of Commons" (p. 38). It is also difficult to see how a student not already familiar with the fundamental principles of our national constitution can make anything out of the following statement: "The fundamental principle of our federal government is that the inherent sovereign powers in the community are normally exercised through the state governments, and therefore that any unrestricted power is left to the states and not to the Union" (p. 54). It

¹ A most excellent discussion and statement of what the case actually decided will be found in Thayer's *Cases on Constitutional Law*, vol. i, p. 496.

is fair to suppose that this is intended as a statement of the principle that, under the constitution of the United States, the states have all powers of government not denied to them, expressly or by implication, and that therefore any power not delegated exclusively to the national government or denied to the states is left with the states. In so far as the statement last quoted suggests that the states have any "unrestricted," *i.e.*, unlimited powers, it is clearly wrong. On the same page the statement that the division of powers between state and local governments is expressed in the state constitutions is certainly more than questionable. There is a tendency discernible to put it there, but this tendency is as yet far from general. In the description of the methods of amending the constitution of the United States, the unaccountable error is made of omitting absolutely any mention of the fact that the assent of the states may be given by means of conventions as well as by the legislative bodies.

What shall we say of the following statements concerning the fifteenth amendment to the federal Constitution? "The amendment provides that no *person* shall be deprived of the suffrage on account of race, color, or previous condition of servitude. By decision of the Supreme Court, this clause does not apply to Asiatics; and the states may, and three of them do, prohibit the voting of members of the Mongolian race" (p. 70). Would it not be better to state the provision of the amendment correctly, substituting "citizen" for "person"? The apparently arbitrary rule about Mongolians would then flow naturally out of the amendment, the simple fact being that Mongolians born abroad are aliens and cannot under the naturalization laws become citizens, and therefore are not protected against disfranchisement. Is it not also clear that a citizen of Mongolian descent — and there are such — is within the provisions of the amendment?

In discussing the provisions which have been imposed by Congress upon many of the states when admitting them into the Union, the author reaches the conclusion that "plainly, the states are not equal" (p. 119). This ignores the fact that in many well considered and therefore weighty *dicta* the Supreme Court has repeatedly stated that these conditions are not binding, and that all the states are and necessarily must be equal under the constitution. This being the state of affairs, plainly the question is an open one. A doubtful statement of the law is contained in the discussion of what the author calls the obligation of the states to surrender fugitives from justice. He assumes that "here the states must act" (p. 121), *i.e.*, the surrender must be made by state authorities. There seems little doubt that the clause of the constitu-

tion in question must receive a construction like that given to the similar clause relating to fugitive slaves, and that therefore the Congress of the United States may, if it wishes, provide a method for the surrender of fugitives from justice independent of the state authorities.

A careless error is contained in the statement that the limitation that "no state shall coin money" is only an implied and not an express prohibition (p. 124); also in the statement on the same page that the states are expressly prohibited from "depriving a citizen of the United States of citizenship." There is doubtless an implied prohibition of this kind, besides the general prohibition of the fourteenth amendment that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Is not the statement on page 164, that "there is no evidence that the convention [of 1787] faced the question whether national courts could nullify [*i.e.*, pass upon the constitutionality of] national statutes," clearly unfounded? Certainly the brilliant work of Brinton Coxe on *Judicial Power and Unconstitutional Legislation* must have escaped Professor Hart's attention, or at least slipped his memory for the time being. The most that can be said is that perhaps the evidence is not conclusive that the convention intended to give the national courts this power, although the present writer is inclined to agree with Mr. Coxe that there are provisions in the constitution which were inserted for precisely this purpose.¹

This by no means exhausts the list of careless and incorrect statements which the reviewer might give, did space permit; but enough has been said to show that much remains to be done before the book comes up to the standard of accuracy and clearness which ought to be found in such a work. To teach students to think clearly and express themselves accurately must always be among the more important duties of the teacher; and it must be confessed that there is much in this book which will not aid the teacher in his task, unless indeed it be made to serve as a warning example of what to avoid. In spite of these defects in execution, the book meets a real need of the teacher who is called upon to introduce the undergraduate mind to a wider knowledge of American government than that obtained in the usual course on "civics" given in the public schools; and it contains within the limits of its five hundred pages a vast amount of material, relating more especially to the actual operations of the government, that has hitherto not been in a form in which it could easily be used by the student. It is

¹ See in this connection Madison's Debates of the Constitutional Convention, under date of August 27.

to be hoped that in a future edition the book will be subjected to a thorough revision with a view to removing the blemishes referred to. When that is done, if it be done thoroughly, the book will fill satisfactorily a place not previously occupied by any other text book upon American government.

WALTER WHEELER COOK.

UNIVERSITY OF NEBRASKA.

Financial History of the United States. By DAVIS RICH DEWEY, Ph.D., Professor of Economics and Statistics, Massachusetts Institute of Technology. New York, Longmans, Green & Co., 1903. — xxxviii, 530 pp.

The general verdict upon this book must be not only favorable, but emphatically favorable. It is a careful, accurate, and comprehensive survey of the history of our federal finances. The student or investigator in this province will hereafter have to take his reckoning by the landmarks which Professor Dewey has erected. Whether viewed from the standpoint of painstaking and extensive research, or from the character of the judgments pronounced, or from the nice proportions in the presentation of material, it merits ungrudging approval. Prefixed to each chapter is a carefully analyzed bibliography of the material used in its preparation. Statistical tables are introduced generously throughout the text, and graphic diagrams of peculiar excellence appear at the close of the discussion of each period.

Of peculiar interest are the verdicts rendered upon moot points in our financial history. They all bespeak full acquaintance with the evidence. They betoken also the historical spirit, the judicial temper, and not infrequently a refreshing independence of view. Thus, for example, in the case of the continental paper money, the author's appreciation of colonial precedents and of the particular situation in which Congress was placed at the time, leads him virtually to absolve Congress from the responsibility for its issue, and to push back the final responsibility upon the legislatures of the thirteen states. A similarly novel view is taken of the panic of December, 1861. Over that event, hitherto, the apologists for Chase and the advocates of the banks have pointed towards each other the incriminating finger. The award of our author is that

the real explanation of the financial crisis of December, 1861, is not to be found either in errors of the treasury or in the selfishness of the banks,

but in the condition of public feeling and a lack of confidence in the success of the war [p. 283].

How little beholden Professor Dewey is to purely doctrinaire trammels may be judged by his affirming the conscious protective aim of the tariff act of July 4, 1789; and even more notably by his virtual acquiescence in the decisions that established the constitutionality of the greenback (pp. 362-367). In the matter of Hamilton's sinking-fund policy, Professor Dewey upholds Dunbar's opinion as against that of H. C. Adams, and believes that

neither Hamilton nor Pitt . . . had any delusion as to the possibility of paying debt without money, or any notion that compound interest could be made to supply the place of an adequate revenue or even atone for its possible absence [p. 115].

On the other hand where the evidence seems to him to be clear, Professor Dewey does not hesitate to strike straight from the shoulder, regardless of the prejudices of the day or the multitude. Thus he says in explaining the original Mint Act:

Because there was no distinct provision for the coinage of a gold dollar, it has hastily been concluded by advocates of silver coinage that the original unit of value was the silver dollar. The error has resulted from not observing that there are two different kinds of units. The word unit as employed in the Mint Act refers to a unit of numbers, and not, as crudely interpreted, to a unit of value [p. 104].

The scant space which the author allows himself often prevents the consideration of interesting collateral issues. Thus, although the case of *M'Culloch v. Maryland* is given proper consideration, there is no account of the causes which induced Maryland to tax the agencies of the second United States Bank. Sometimes the space limitations almost seem to have excluded adequate criticisms of certain phases of our history. For example, an excellent summary of the Greenback philosophy is given (pp. 378-382), but unless the author assumed that the inflationists' folly, like that of Jannes and Jambres, is "manifest unto all men," a critical estimate of that philosophy might well have been added.

The only chapter to which important exceptions may be taken is the introductory chapter on Colonial Finance. The difficulty that confronted the author here was that in colonial times there was no exact analogue to the subsequent federal government. In consequence the

author resolves that he will consider the central government of each colony as the prototype of the federal government afterwards created. In many cases this was by no means true. The local government was at times the only government whose financial importance was worth noting. For years together in the early history of the Jerseys, for example, the General Assembly did not meet, although town taxes were regularly raised. Even when taxes were raised in the colonies by acts passed by the General Assembly, the burden they imposed was frequently light in comparison with the weight of local taxes. As late as 1781 Abigail Adams in a letter to her husband writes: "Yet our state taxes are but as a grain of mustard seed, when compared with our town taxes." But even granting that from a political standpoint the central government of each colony was the nearest analogue to our federal government, Professor Dewey in treating of public income might well have given quasi-economic receipts — such as quit rents and land sales — a much greater relative degree of importance. Moreover the ready generalization (p. 10) that the New England colonies inclined to the general property tax, the southern colonies to import and export duties, and the middle colonies, dominated by Dutch methods, to the excise system, ought certainly to be qualified so far as some of the middle colonies are concerned. That early excises were to be found in New York is doubtless true; but no colonies were more under the influence of New York than East Jersey and West Jersey, and in their early history (1664-1702) the excise is all but unknown, and as a fiscal resource is altogether insignificant. Exception might also be taken to the statement (pp. 16, 17) that in New York the heavy duties imposed during Dutch rule and at the command of the Duke of York "had an influence in accustoming the colonists to tariff taxes." During the period in question, at least up to 1680, the customs jurisdiction over ports in New Jersey and Delaware was claimed and often exercised by New York officials. So far as appears, the rates of duty in the ports named during this period never exceeded ten per cent *ad valorem*, and frequently were lower.

It is no disparagement of this work, nor any abatement of our lasting indebtedness to its author, to say that the task still remains for some one to write the classic history of American Finance. Not that there is to be anticipated any revolutionary reversal of the historical and financial verdicts already registered by the labor of investigators, and by Professor Dewey not least of all. But now that the ground lines of the structure are so clearly defined, and the foundations laid so durable and strong, it but needs the great master-builder

to combine the incomparable riches of material into a noble edifice, at once the monument of the scientific historian and masterpiece of the literary artist.

Immensely superior as is this work to Bolles's *Financial History of the United States* in almost every particular, there is that occasional quality of charm in the older work which Professor Dewey severely neglects. Noyes's *Thirty Years of American Finance* is unquestionably inferior to the work under review in point of accuracy, and in breadth and impartiality of treatment; but on the whole it gives a more readable account of the period in question than Professor Dewey affords us.

In reading this book one is struck more than once with the fancy that the author is a sort of historical *Baedeker*. The financial student may safely entrust himself to his guidance. The cicerone is always well informed, painfully conscientious, "double stars" all the *Sehenswürdigkeiten*, gives us the varying rates of cab-fares and hotel charges, and, in short, is better than anything else of the kind, and is absolutely indispensable. But while to the innumerable army of tourists the guide-book is indisputably the most useful book in the world, one does not read it unless first interested in the projected tour. If one is going abroad, it is well to carry along Baedeker's *Northern Italy*, but the existence of the volume does not render Ruskin's *Stones of Venice* superfluous.

W. M. DANIELS.

PRINCETON UNIVERSITY.

A History of the Greenbacks, with special reference to the Economic Consequences of their Issue. By WESLEY CLAIR MITCHELL. University of Chicago Press, 1903.

Forty-two years have passed since the first issue of legal tender notes was made. No financial transaction of the government has ever been so hotly and continuously debated, and the debate is not yet ended, although it has cooled considerably. That the greenbacks made the war far more costly to the taxpayers than it would otherwise have been is not now disputed. That they gave birth to a large brood of financial heresies and misconceptions, some of which still linger, is the conviction of all instructed persons. That they caused great injustice and hardship to individuals during the war, and long after, would not now be denied. The question whether they were necessary — whether the government and the Union could have been saved without them —

is still in dispute and the opinion of the majority is that they were necessary.

Mr. Mitchell's opinion coincides with that of most scholars who have gone deeply into the subject. He holds that the question before Congress in 1862 was not greenbacks or disunion, but greenbacks or bond issues, plus taxation on an adequate scale, such as was enacted two years later. Since Mr. Mitchell's conclusions were first published, Mr. Don C. Barrett has shown (in the *Quarterly Journal of Economics*, May, 1902), that the crisis of 1862, which was made the occasion and justification of the first legal tender act, was actually met and surmounted by temporary deposits and certificates of indebtedness before the legal tender notes could be engraved, printed and issued. The conclusion is, therefore, warranted that if those precious months had been employed by Congress in passing a tax bill, like that of 1864, the government's credit would have been so fortified that 6 per cent bonds could have been sold in sufficient amounts at a moderate discount. The question whether the statesmen of the war period ought to have known more than they did know on these subjects, in the presence of the startling events that confronted them, is a different one altogether. However it may be decided, we are not estopped from throwing all possible light upon their acts from our superior and calmer standpoint; and here we are much indebted to Mr. Mitchell for his industry, carefulness and judicial temper.

The value of the legal tender notes as measured by gold forms an interesting chapter in the book before us and throws some light on the "quantity theory." It appears from the author's investigations that the most potent factor in determining this value was the government's credit, and that the quantity afloat had only a secondary influence. After 1863 the quantity of greenbacks outstanding at different times varied but slightly, and after 1864 not at all, yet the variations in their value were more extreme in the later than in the earlier period. The government's credit was affected by a great variety of events, military, diplomatic, legislative, political, *etc.*, and it is the author's opinion that "the quantity of the greenbacks influenced their specie value rather by affecting the credit of the government than by altering the volume of the circulating medium."

One hundred and fifty pages of the book are taken up with the effects of the greenbacks on prices of commodities, wages, rent, interest and profits. It is not difficult to trace the course of prices. They kept company with the quotations of gold in a general way, and the coincidence is close enough to assure us that the variations were due to a

common cause. In the case of wages, however, the data are wanting for anything like exact conclusions. The statistics of the Aldrich report are considered very unsatisfactory although the best we have, and Falkner's table of relative wages based thereon is rejected altogether by Mr. Mitchell. His conclusion is that the paper currency practically confiscated one-fifth or one-sixth of the real incomes of wage-earners, and that there was no industry or occupation in which the advance in money wages kept pace with the advance in prices. There is no reason to doubt these conclusions, which confirm those reached by others before Mr. Mitchell began his work in this field. The chapter on wages is protracted to tedious length.

The rate of interest on loans did not increase during the war. A man who lent \$1,000 in April, 1862, for a year, at 6 per cent should have received 42 per cent in addition in order to keep his capital intact, but he did not. He was poorer by that amount when the loan matured. If he reloaned the principal for another year he lost 23 per cent more, but if he had continued lending from time to time until specie resumption took place, he would have regained the *principal* and would have lost only that part of the *interest* represented by the depreciation of the currency. Why did not the rate of interest on such loans rise? Why did not the rate of discount at the banks rise correspondingly? Mr. Mitchell thinks that it was because people could not foresee the course of events and the fluctuations of the currency. For this reason both borrowers and lenders "took their chances." But were there not other elements in the problem, such as custom and usury laws? Custom constrained banks to discount the paper of their depositors on the usual terms. The usury laws made it dangerous to charge more than the prescribed rate. It may be said that, when the natural rate is above the legal rate, means will be found to evade the law by secret arrangements or by other forms of investment. This is true in part, but only the loans made in harmony with the usury laws find a place in the quotations of the newspapers and in the official tables from which the statistics are drawn.

Mr. Mitchell's chapter on the Production and Consumption of Wealth during the war is colorless and unsatisfactory, for the want of data. Was the war period one of general prosperity? Was the consumption of goods (other than army supplies) unusually large? Writers and speakers were found who took the affirmative side of both these propositions, in rather boisterous tones. Their unexpressed conclusion was that war and public debt and irredeemable currency are conducive to national prosperity. Then, from the point of view of dol-

lars and cents, it is a mistake to make peace! The truth is, as Mr. Mitchell argues, that the few who made money out of the war, or in consequence of it, made a display of their wealth, while the many who lost by it suffered in silence. Attempts to prove this state of facts are alike ineffectual and needless. Tangible evidence that the war period was not one of material prosperity is found in the decline of new railway building, which fell from 1846 miles in 1860 to 651 miles in 1861 and did not recover its previous increment until 1866.

In the *Journal of Political Economy*, March, 1897, Mr. Mitchell made an elaborate calculation of the increased cost of the war to the taxpayers, due to the depreciation of the currency. The sum arrived at was \$528,400,000. His later studies have brought the figures up to \$589,000,000. In a foot note on the last page of the book he suggests a possible deduction of \$72,000,000. Probably half a billion dollars in gold is not an excessive estimate of the additional cost thus accruing. The cost of the greenbacks, however, does not terminate with the end of the war. It is a continuing charge, and its next heaviest item is the expense incurred in their redemption, of which the country had harsh experience in 1894-'5-'6. Mr. Mitchell's preface implies that he intends to follow the career of the greenbacks down to the present time. It is much to be hoped that he will, for, notwithstanding the "bulkiness and fragmentary character" of the work under review, for which he apologizes, it is so far superior to anything else in the same field that every reader will welcome the future installments.

HORACE WHITE.

NEW YORK.

American Railway Transportation. By EMORY R. JOHNSON. Appleton's Business Series. D. Appleton & Co., New York, 1903. — xvi, 434 pp.

The book is divided into an introduction and three "parts" dealing respectively with the American railway system, the railway service, and the railways and the public. Each part is in turn divided into chapters, of which there are twenty-nine in the book, each treating of some more special topic logically included within the larger division. At the end of each chapter is a list of references for further reading selected with discrimination. The historical part of the book is fittingly illustrated with contemporary views, and throughout the whole of it maps and diagrams assist in illuminating and supplementing the text.

In producing this book Professor Johnson has placed all instructors

in the field of transportation under obligations to him. The field of study embraced within its scope is too wide for individual research work in all its parts; hence the writer of the book voluntarily sacrificed his interests as an investigator to the interests of the class room and the general reader. This deserves recognition. Professor Johnson's utilization of the results reached by others — for which, of course, full credit is given — in supplementing his own extensive and thorough studies has been accomplished with good judgment and skill. The book represents a unified whole in which the salient points involved in the study of transportation have been clearly presented and properly coördinated. The author has no special theory to advance and no peculiar points of view to support; his attitude is severely neutral throughout. The conclusions and suggested conclusions formulated in the book are in general harmony with the best thought on the subject as expressed in the public utterances and publications of leading railway men, economists, and commissions.

One of the most noteworthy chapters in the book is that devoted to the present railway system of the United States. A series of maps is presented, each of which contains all the lines belonging to some one of the "groups" of railways controlled by certain interests. These maps are supplemented by a tabular analysis of the grouping of American railways by ownership and territory, giving the names and mileage of each of the leading constituent companies. "The table shows a rather marked parallelism between the territorial grouping and the consolidation of systems by ownership or 'community of interest.'" Reference is made to similar groupings of railways in England and France, and in a subsequent chapter some of the leading features of European systems are discussed. Professor Johnson gives an admirable sketch of the development of inter-railway relations from the earlier rate agreements and New England pools to the most recent community of interest arrangements. In his judgment on the present situation he is in general accord with the Interstate Commerce Commission, believing that the commission should be entrusted with additional powers in order that abuses may be promptly checked. He summarizes the movements and events which resulted in the creation, by law, of state and federal commissions in such a way as to leave the student with a clear impression of the untenability of a policy of *laissez faire* in railway matters and the necessity of a vigorous reaction against such a policy. The author has seen enough of railway men and methods to know that, like the rest of mankind, they are actuated by a variety of motives and that the great majority of them can be relied upon to

do what a healthy public sentiment approves. This does not, however, blind him to the fact that evil-minded men and evil methods find in the railway an unusually serviceable instrument which it is the duty of the law and the administrators of the law to control in the interests of the public.

Professor Johnson's book is well adapted to introduce the student or reader into the problems of railway transportation and to guide him in the prosecution of his studies beyond the elementary stage.

B. H. MEYER.

UNIVERSITY OF WISCONSIN.

Railway Legislation in the United States. By BALTHASAR H. MEYER. New York, The Macmillan Co., 1903. — 329 pp.

Professor Meyer has here collected a number of studies made at various times in the history of railway legislation, some of which have appeared in the *POLITICAL SCIENCE QUARTERLY*, some in the reports of the Industrial Commission. These studies include the analysis of railway charters early and late; constitutional provisions of the different states that have reference to railways; state legislation establishing general laws for railway organization and management; statutory provisions of successive legislatures, including the control of transportation agencies through the medium of commissions; a summary of the leading principles enunciated in the decisions of the Interstate Commerce Commission; the decisions of the Supreme Court interpreting the Interstate Commerce Act, and an exposition of the Cullom Bill for the amendment of that law. An appendix contains the special charter of the Baltimore and Ohio Railroad, the charter of the Southern Railway under general law, the Massachusetts Commission Law, the Interstate Commerce Act, and the Elkins Act.

The merit of the book lies in the fact that this is the only complete summary of railway legislation in convenient reference form. It contains no new proposal for the solution of existing problems, and makes no pretense at originality. Aside from the impractical suggestion of advisory councils composed of carriers and shippers, the author's proposals are confined to a discussion of the clauses of the Cullom Bill as representing the lines along which the problem should be worked out. These include suggestions which have in part at least been admitted by shippers, carriers and students of the question to be imperatively demanded. The author recognizes the absolute impotence of the commission under its existing powers and lends his support to the attempt

to clothe it with the rate-making power, in perfect confidence that "substantial justice will be done . . . to an extent hitherto unknown" — a proposition that is at least questionable. He supports the commission in its evident wish to undertake the herculean task of elaborating a single classification for the entire country; advocates the supervision of railway accounting by giving the commission access to the books of railways; approves the plan in the Cullom Bill for expediting cases in the courts, which provides that the testimony submitted by the commission shall constitute the record upon which the case shall be heard, and supports the demand now so general that pooling shall be legalized under authority of the commission. Students of the railway problem are under deep obligation to Professor Meyer for the results of what must have been a wearisome task, the success of which lies in the painstaking thoroughness with which it has been accomplished.

FRANK HAIGH DIXON.

DARTMOUTH COLLEGE.

The Rise and Progress of the Standard Oil Company. By GILBERT HOLLAND MONTAGUE. New York and London, Harper and Brothers, 1903. — 143 pp.

In his study of the Standard Oil Company, first published in the *Quarterly Journal of Economics* (February, 1902; February, 1903), Mr. Montague approaches the subject from the point of view of railway "economics." The period 1870-1880 was one of intense competition among railways; and the discriminating rates, of which shippers possessing strategic advantages were able to avail themselves, served as a basis for the future prosperity of many industrial enterprises, among them the Standard Oil Company. What Mr. Montague attempts to do is to show why the railroads singled out the Standard Oil Company as the recipient of such favors as probably no other enterprise has ever enjoyed.

In 1870, before the Standard Oil Company had secured any special favors from the railroads, it was a thriving enterprise, producing about four per cent of the refined oil of the country. So far as concerns size of plant or efficiency of equipment, it cannot be said to have been notably in advance of some of its competitors. Seven years later it controlled ninety-five per cent of the total output of refined oil. The cause of this extraordinary development is well known: discriminations in freight rates, enabling the Standard Oil Company to ruin its competitors one by one, or to force them to sell at its own price. Mr.

that Cleveland, where the company began its operationally well situated with respect to transportation, the railroads actively competing among themselves, reserved to force rates down even lower than railroads have made them. Hence the railroads could be on terms unfavorable to themselves as well as to the Standard Oil Company. This will explain the animosity between the railroads and the South Improvement Company. Drawbacks were granted to the latter not only on its own but on those of its competitors. The railroads were accustomed to discriminate in favor of certain companies. The Standard Oil Company could force them to discriminate in its favor. That was "business," all will agree. Mr. Montague is to regard it as economically and ethically justifiable. These were the economic grounds on which to judge this [the South Improvement] contract. Popular judgment, however, was much less lenient (p. 28). Absurd as it seems to Mr. Montague, the Standard Oil Company became quite excited when it secured this contract, whereby they were each and all to pay the same rate to their common enemy. Public opinion, unenlightened by "deliberate" analysis, condemned the plan, and forced the railways to rescind the contracts; not long afterward the charter of the South Improvement Company was annulled. In the meantime, however, it had accomplished an important purpose, as we learn from other sources than the review, for, armed with a contract meaning ruin for its competitors, the Standard Oil Company proceeded rapidly to absorb the latter. It is perhaps unjust to say that Mr. Montague deliberately apologizes for the Standard Oil Company. Yet it is difficult to understand the mental attitude of a student of economics who fails to see anything contrary to public policy in the practice of whole-sale discriminations, and who regards the success of a company built up through such discriminations as the result of economic success. Did Mr. Montague know anything about the methods of the Standard Oil Company in its war with the Tidewater Company (mentioned on page 86)? If so, why was not it treated with candor? A more serious fault, is the author's failure to verify statements taken doubtless from untrustworthy sources. On page 97 mention is made of an agreement between the Standard Oil Company and the receiver of the Cleveland and Marietta Railroad, the terms of which the Standard was to receive drawbacks not only on its own shipments but on those of its competitors:

The Standard Oil Company never carried this contract through, but sent it back to its manager with instructions to end the arrangement and refund to the shippers the amount of these wrongful rebates.

As a fact, the rebates were collected between March 30 and April 30, 1885, on the oil of Mr. George Rice, a competitor of the Standard. The total amount of these rebates was \$340. On October 17, 1885, Mr. Rice filed an application to have the receiver of the railway report whether he was being discriminated against. Twelve days later the Standard agent at Marietta received a check from the company for \$340, which was duly paid over to Mr. Rice. The reader will judge whether it was a twinge of corporation conscience, or the pending investigation, which resulted in the disgorging of the "wrongful rebates."

The limits of a review do not permit the pointing out of other inaccuracies in statement, of which the reviewer has noted not a few. While the value of the book is thereby seriously impaired, the author is nevertheless to be commended for his effort to correlate the history of the Standard Oil Company with the railway history of which it is in one aspect an incident.

ALVIN S. JOHNSON.

COLUMBIA UNIVERSITY.


The Life of William Ewart Gladstone. By JOHN MORLEY. The Macmillan Co., New York and London, 1903. — Three volumes, 661, 666, 641 pp.

That the qualifications of the author for the treatment of this subject are in many respects of the highest order goes without saying. His mastery of English prose style, his broadly critical temper, the learning and insight which he has shown in his earlier biographical and critical studies, adequately vouch for the literary success of the work. Another group of qualifications of special value have their origin in the intimate acquaintance which existed between the author and Mr. Gladstone during the later years of that statesman's life, and in the prominent part which Mr. Morley himself has played in the events of the last quarter of a century. Finally, Mr. Morley was made Gladstone's literary executor, and by virtue of that position had access to the great mass of his private papers, a collection which in volume far exceeds what is common even among statesmen. Many of Gladstone's correspondents, also, placed letters which they had received from him in the hands of the author. Not the least interesting chapter in

the work is that on *The Octagon*, the room at Hawarden where Gladstone stored the letters and papers of a lifetime. From the sketch there given an idea may be gained of his many-sided interests, as well as of the manuscript material from which in part the biography has been written.

But, as the author remarks, the memorials which Mr. Gladstone has left, whether they be in written or printed form, are to a considerable extent impersonal — the outgrowth of the statesman's public career, the expression of his views on large questions of civil or ecclesiastical policy, or of historical or literary criticism. In his correspondence, even from his early years, Gladstone was a reasoner on somewhat lofty and abstract themes, while in middle and later life to that characteristic was added his absorption in public business. During the most of his life he kept a diary, but its entries, though multitudinous, are brief. So far as its contents are revealed in this work, its chief value is to be found in the light which it throws on his relations with his cabinets. Comparatively few memorials of a genuine childhood and youth appear to have survived. We get in this work a somewhat distant and indistinct view of his experiences at Eton and Oxford. Only glimpses of his family life are given. Of the human side of Gladstone, apart from that which was revealed by his public career, we have the most satisfying account in the chapter on the struggle to retain the estate of Hawarden, and in the narrative of some of the later conversations between the author and the aged statesman, when the two were seeking health and recreation on the continent. It was largely through the acquaintance with business which came as the result of his labors to save Hawarden from ruin, that Mr. Gladstone gained the experience that fitted him for his later work as finance minister.

It is, then, to Mr. Gladstone's life on its public side that the author is necessarily led to devote his chief attention. This had two leading aspects, the one a result of the interest which he took in ecclesiastical questions, the other of his great activities in the secular realm. Of these the former gave to Mr. Gladstone's life an almost unique character. It was the outgrowth of his deeply religious nature, of his early training at Oxford and elsewhere, and of his natural love for the problems of church history and government. It was the source whence proceeded a large part of his literary activity. It furnished a chief basis of his early Toryism. It gave him his intense interest in the tractarian controversy, in the question of church disestablishment, in the Vatican Council, in the relations between Western Christendom and the churches of the East. It made him unsympathetic with the prog-



ress of natural science and with the modern critical spirit. When he left Oxford, it would have been his choice to enter the church. It was in obedience to his father's desire that he chose a parliamentary and official career. In his later years he wrote thus about the character of his mind and about his early preferences:

There was a singular slowness in the development of my mind, so far as regarded its opening to the ordinary aptitudes of the man of the world. . . . In truth the dominant tendencies of my mind were those of a recluse, and I might, in most respects with ease, have accommodated myself to the education of the cloister. All the mental apparatus requisite to constitute the "public man" had to be purchased by a slow experience and inserted piecemeal into the composition of my character.

To the activities of Mr. Gladstone as the most prominent layman of the English church the author devotes some attention. Sufficient reference is made to them to show that they occupied a very important place in his career as a whole. But no attempt is made to write his biography from that standpoint. On the contrary, those interests are kept strictly in the background. The public career of Mr. Gladstone in its relation to secular affairs is made specifically the subject of the work. Even with that limitation, accompanied with reasonable condensation and with the exclusion of most unrelated topics, Mr. Morley has found that the theme of Gladstone, the statesman, demands for its treatment nearly two thousand large octavo pages. It necessitates a review of more than sixty years of English history, and that during a period of great events and changes. It raises the question — always a difficult one — to what extent should the general history of the time be utilized in explanation of the ideas and policy of one who has borne a leading part in its events? A further question of proportion relates to the use of extracts from the voluminous letters and papers at hand, either as a substitute for narrative or to enforce and clarify the author's statements. In both these particulars Mr. Morley's chief difficulties have arisen from the abundance of his materials. Notwithstanding the bulk of the work, all readers must admit that the author has drawn upon the general resources of history only to the extent that was necessary to explain Mr. Gladstone's career. While much documentary evidence is introduced, it is not excessive and it does not clog the main current of the narrative. There is no padding, and little waste material in the work. The treatment is ample and full, but it is not overweighted with detail. Not only is the reader's attention sustained throughout, but it steadily grows as the subject unfolds through the

second and third volumes, and as we approach the time when the author took his place in Parliament and in the cabinet by the side of the great Liberal chief. It reaches a climax in the chapter on the Breach with Mr. Parnell, followed as it was by the wreck of the Home Rule cause and the retirement of Mr. Gladstone from public life.

In the third volume, which deals with events subsequent to 1880, Mr. Morley was specially confronted with another difficulty. How should he impartially treat events of so recent a date, struggles in which he, as well as Mr. Gladstone, had prominently shared, and which had aroused such intense feeling? For this period the book becomes an original historical source in a sense which is not true of the other volumes. Through it all flows a dignified and sustained narrative, from which it must be said that undue partisan reflections are excluded. Gladstone and his great achievements in Parliament and outside are of course the central theme, but not to the disparagement of others or of the opinions which they held. In the third volume, as in its two predecessors, Mr. Morley has fairly maintained the attitude with which he set out, that of intelligent and sympathetic treatment of the great subject which had come to his hand, without undue bias and certainly without "importunate advocacy or tedious assentation."

In the very brief space which remains it is possible to call attention to only a few of the features in the treatment of Gladstone's political career which seem to the reviewer to be especially valuable and suggestive. The account of the relations between the young Gladstone and Sir Robert Peel are of great interest, showing the promptness with which the abilities of the new member were perceived, and how through his service in the Board of Trade he was first brought into close contact with the intricacies of budget legislation. The history of the long process by which, as a member of the group of Peelites, Gladstone held aloof from both parties, but finally, in 1859, abandoned the Tories and joined the Liberals, is detailed at length. But it is on the whole a disappointing record — except in its result — and one which certainly does not arouse the enthusiasm of either author or reader.

During that period, however, Gladstone's interest in foreign affairs was first awakened. This came in 1850 through his study of conditions in the Kingdom of Naples. It was further extended by the Crimean War, and passed through an interesting phase when, in 1858, he went as special commissioner to the Ionian Islands. The Italian war of 1860 found him an ardent supporter of the cause of nationali-

ties, to which he ever remained true. While his views on finance were being liberalized by the adoption of the principles of free trade, hatred of oppression and the conviction that the rules of public and private morality were fundamentally the same had already made him the foe of dynastic combinations which were not also rooted in the consent of the popular will. As early as 1850 he wrote:

Ireland, Ireland! that cloud in the west, that coming storm, the minister of God's retribution upon cruel and inveterate and but half-atoned injustice! Ireland forces upon us those great social and great religious questions.

These volumes set forth in detail the proof of the statement — already more than once made — that it was the ardent religious and imaginative element in Gladstone's nature, which came to him through his Highland-Scotch lineage, that in the end swept away his Oxford Toryism and made him a tribune, not merely of the English and Irish people, but of all struggling nationalities.

Full and adequate treatment is given to Mr. Gladstone's financial measures, to his acts for the extension of the suffrage and to his legislation relating to Ireland. The well known story is told with such additions as are furnished by the statesman's private papers. His relations with the Queen are traced through in some detail. A matter of still greater interest to the student of English institutions is the light which is thrown on the relations between Mr. Gladstone as premier and the members of his cabinets. An entire chapter in the second volume is devoted to this subject, while extended references to it occur in several other places. It appears that Mr. Gladstone, instead of playing the dictator, treated his colleagues with the greatest consideration, seeking in all ways to harmonize their differences and to secure their cordial and active support. His large experience and capacity for work of course gave to his opinions great weight, but his leadership was always the legitimate result of intellectual and moral ascendancy.

Taken as a whole, this is undoubtedly one of the noblest biographies in the language, a worthy treatment of a great and inspiring theme.

HERBERT L. OSGOOD.

The Tariff Problem. By W. J. ASHLEY. London, P. S. King & Son, 1903. — vi, 210 pp.

Though a large part of this volume is devoted to the task of showing that *something* must be done for British industry, the author presents

two positive arguments, with several negative ones, in favor of a protective system as a means to that end. The positive arguments may be called the "big stick" argument and the "anti-dumping" argument. The negative arguments are only intended to show that certain alleged evils of protectionism would not exist so far as England is concerned, or would be much less serious than is generally supposed.

By the "big stick" argument is meant the contention that a protective system may be wise when used as a means of securing more favorable terms, say a reduction of tariff duties, from other countries. Professor Ashley begins by quoting the well known passage from Adam Smith, wherein the validity of this argument is admitted.

There may be good policy in retaliations of this kind when there is a probability that they will procure the repeal of the high duties or prohibitions complained of. The recovery of a great foreign market will generally more than compensate the transitory inconveniency of paying dearer during a short time for some sorts of goods.

He quotes Adam Smith further to the effect that the decision as to whether such retaliations are likely to secure the end aimed at must be left to "that insidious and crafty animal vulgarly called a statesman or politician." Unfortunately "that insidious and crafty animal" is not primarily interested in the question whether such a policy is likely to succeed or not. His main business is to carry elections, and his chief interest in such a policy is in its efficiency as a vote-getter; therefore the politician, as such, is the last person in the world to whom the economist ought to defer on such a question.

The author next quotes, somewhat unfortunately for his cause, from Professor Schmoller, as the leader of the German historical school of economists.

The new era of protection has arisen not because economists and statesmen have been unable to understand the beautiful arguments of free trade, nor because a few monopolists and manufacturers have dominated the government: *it has arisen from the natural instincts of the peoples.* It does not only rest — in many cases it does not primarily rest — on List's doctrine of educative tariffs (the "productive powers" or "infant industries" argument); it arises from a motive which is rather instinctively felt than clearly understood, *viz., that tariffs are international weapons (Machtmittel)* which may benefit a country, if skillfully used.

The italics in the above quotation are mine, and they serve to call attention to the vital point in Professor Schmoller's observations, *viz.,*

that tariffs are "international weapons" seized upon by the "natural instincts of the people." The correctness of this observation no one can doubt who has watched the course of a tariff campaign in this country and has marked how effectively the designing protectionist has appealed to the natural popular instinct of international jealousy. The author quotes further from Professor Schmoller to the effect that they who ignore the importance of "negotiation-tariffs" dwell in Cloud-cuckooland; but in what sublunary region dwells the ethereal spirit of him who imagines that an international weapon seized upon by the instincts of the people will secure concession rather than further retaliation? Military threats seldom secure concessions except from nations that are weak from a military standpoint. They usually, on the other hand, provoke a blow in return. Similarly, such an economic weapon as a tariff can hardly be expected to secure concessions except from nations industrially weak. The effect of our tariff policy toward Canada, for example, has not been, as certain guileless souls imagined it would be, to bring her a suppliant to our feet. It has been, on the other hand, as anyone who understands the natural instincts of a high-spirited and self-respecting people ought to have known, the means of developing a greater degree of industrial self-sufficiency in the Canadian people, besides provoking retaliatory tariffs against ourselves. In the opinion of the reviewer, neither the commercial world at large, nor England in particular, has anything to hope from the system of retaliatory tariffs.

But aside from the probable results of such a policy as a mere weapon of offence, a tariff system is about the clumsiest and most ineffective weapon imaginable in a popular government; though in the hands of a Napoleon it might be used to some purpose. Such a weapon can not be used without affecting *interests*, and these *interests* are certain to clamor loudly and continuously for attention. It will be found that the "big stick" is not in a single strong hand controlled by a single will, but in a number of hands controlled by diverse and conflicting wills.

By the "anti-dumping" argument is meant the contention that under modern industrial conditions, where the element of fixed charges figures largely in the cost of production, the producers of one country can and will make strenuous efforts to enlarge their output by selling in foreign markets at a price considerably below the total cost of production, provided only it is high enough to pay the running expenses, or what Marshall would call the "prime cost." This "dumping" process becomes especially prominent in times of depression, when it is better to sell at a loss than to stop producing altogether, because to

stop producing would mean a still greater loss. It is this excessive dumping in times of depression that is peculiarly injurious to the country in the position of the *dumpee*. In so far as the *dumpor* pursues a regular and consistent policy of dumping, the *dumpee* might, and probably would, on the whole be benefited, for, though certain industries might be crushed out, certain others would be fostered, and the consumers would be benefited. But this spasmodic dumping gives no time or opportunity for the development of new industries, while it tends toward the ruin and bankruptcy of certain existing industries.

This argument is undoubtedly sound so far as it goes. Even low average prices for raw materials, when those prices are violently fluctuating and spasmodic, are less desirable from the business standpoint than somewhat higher average prices when they are steady and calculable. But manifestly the argument applies with full force only to that class of industries where fixed charges are high, or where, to use Marshall's phraseology, there is a wide difference between prime cost and total cost. Agriculture is manifestly not an industry of this class, and the "anti-dumping" argument scarcely applies to the proposal to protect British agriculture.

Among the author's negative arguments, the first aims to show that the general presumption in favor of *laissez faire* is not so strong as was supposed by the earlier free-trade economists. Here again the author's argument is undoubtedly sound so far as it goes. The next negative argument is designed to show that the incidence of corn duties does not necessarily and in every case fall upon the consumer of bread. Here also there is a certain basis for the author's position, though he has not made a very thorough analysis of the question, nor does he even show familiarity with the literature of the subject. The argument that the incidence of corn duties falls largely upon the foreign producer gives the poorest kind of support to the proposition to promote British agriculture by such duties. If such duties do not raise the price of wheat in the British market, how are they going to help the British farmer? In so far as they do raise the price of wheat in the British market, they are not borne by the foreign producer. This predicament the author cannily evades by not bringing these two questions together at any point in his discussion.

Aside from the economic consequences of a protective system, there is the question of its effect upon the interdependence of the various parts of the British Empire. As a means of promoting a closer federation, a tariff policy may be, in the author's opinion, an effective agency, but upon such a question there is at least room for difference of opinion.

If American experience is any guide, British economists and publicists will be slow to base many hopes upon such a policy as that which is now being proposed. Next to the slavery question itself, no other question has been the occasion of so many sectional jealousies and class struggles; and no other question has come so near disrupting the Union itself as the tariff question. In the reviewer's opinion, it is about an even chance whether such a system as that proposed in the volume before us would lead to a closer integration of the British Empire or set at work the forces which will sooner or later cause its complete disintegration.

T. N. CARVER.

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The History of Liquor Licensing in England, Principally from 1700 to 1830. By SIDNEY and BEATRICE WEBB. London, New York, and Bombay. Longmans, Green, and Company, 1903. — viii, 151 pp.

For some time Mr. and Mrs. Sidney Webb have been engaged in a study of English local government in the eighteenth and nineteenth centuries, and they propose to publish the results of their investigation during the present year. Meanwhile they have issued their chapter on liquor licensing, adding to it a short introduction which gives it a certain degree of historical completeness. The authors believe that this little work will prove useful in view of the present position of temperance reform in England, especially because it contains an account of the suppression without compensation of a large number of licensed houses during the eighteenth century. In this belief, they are certainly justified; for the publication of Rowntree and Sherwell's work on *Temperance* a few years ago and the extensive discussion of the relation of liquor consumption to industrial efficiency have aroused in England a wide-spread and practical interest in the question of temperance legislation. Much of the present controversy hinges on the problems of compensation and local or central control, and, with their usual predilection for precedent, English reformers will doubtless welcome this historical account of two hundred years of experimentation. Leaving aside the early manorial and municipal liquor regulations, Mr. and Mrs. Webb take up their subject with the introduction of national measures at the close of the fifteenth century. At the very outset, they call attention to the fact that the regulation of the traffic, from the first, was not based on any abstract theory, but on the prac-

tical necessities of the state. The preambles of the statutes were filled with complaints against the disorder, crime, and idleness caused by drunkenness, and the legislators were dealing with the liquor traffic as an enemy of social peace. But, as the authors point out, these efforts were constantly thwarted by the utilization of the business for purposes of revenue, and by the governmental policy of encouraging the great brewing and distilling industries. Parliament began the work of regulation in 1495 by an act which empowered any two justices of the peace to close up a public house or take the surety of the keeper for his good behavior. The licensing system was introduced in 1552 by a statute which required all ale-house keepers to hold a license from the justices of the peace. By implication, the local magistrates were invested with discretionary powers as to the conditions of the license, subject, of course, to royal proclamations and the strong administrative supervision of the Privy Council, which lasted until broken down by the Civil War. Under James I, an elaborate system of strict control was devised, but at the end of the seventeenth century a period of general laxness began, and the justices apparently made no attempt to keep down the number of houses. This conclusion of the authors is entirely borne out by Hamilton, in his *Devonshire Quarter Sessions*, a work which they have apparently not used. Drunkenness increased enormously and the government encouraged the liquor industry by several favorable statutes. In 1702, Parliament, finding that the license system was "a great hindrance to the consumption of English brandies," so far repealed the law as to permit distillers to open retail houses at will, and the result was "a perfect pandemonium of drunkenness." The excesses resulted in a reaction, and in 1729 and 1736 Parliament adopted a strong restrictive policy of high license and heavy taxation on the retail trade. The law was so stringent, however, that it defeated its purpose; the consumption of liquor increased, and the government lost its revenues. In 1743, Parliament passed an act designed to secure a revenue from the manufacture and requiring liquor dealers to have licenses issued at a small fee. This measure was followed by a number of minor acts limiting the discretion of the justices and directly regulating the conditions under which the trade was to be carried on. The result was a decrease in illicit business, a rapid growth in the number of licenses, and a notorious laxity in the control of the traffic generally. Wide-spread debauchery was again followed by a reform movement, which has apparently received no attention from other historians of the period. This movement, initiated in 1786-87 and supported by a royal proclamation against vice and immorality, in-

cluded the adoption, by benches of magistrates in different parts of the country, of such devices as the refusal of new licenses, the withdrawal of licenses from badly conducted houses, and in some cases, even the establishment of a system of local option, all without the slightest idea of compensation. This policy steadily decreased the number of licenses in the face of a growing population and was accompanied by a reduction in the amount of crime and social disorder. The practice of restriction, however, soon awakened a violent opposition based on philosophic radicalism and a general dislike of the monopoly which the system fostered. A series of Parliamentary investigations beginning with 1816 resulted in a report against the control of the liquor business by the justices of the peace. Disregarding entirely all questions as to the social effects of their legislation, Parliament in 1830 passed a bill providing that any rate-payer could open his house as a beer shop without a justice's license or control on payment of two guineas to the local excise office. The effect was instantaneous; in less than six months 24,342 new beer shops were opened and, according to Sydney Smith, the sovereign people was in a beastly state. Crime and social disorder spread rapidly, and even "the optimistic prophecy that an increased consumption of beer would be accompanied by a permanent reduction in dram-drinking was completely falsified" (p. 119). In spite of protests from every side, the Whig doctrinaires refused to return to the restrictive policy. At this point, Mr. and Mrs. Webb close their research, but they append a general survey of the recent legislation. The "free-trade" policy continued in force until 1869, when a modified license system for beer houses was re-established and licensed premises again brought under the control of the justices of the peace, subject to certain limitations on their discretion in refusing licenses. In 1874 the closing hours were fixed by Parliament; in 1886 the sale of liquor to children for consumption on the premises was forbidden, and in 1901 all sales to children were required to be in sealed vessels. The authors end their account by calling attention to the fact that the present tendency of liquor legislation is in the direction of greater control by local government authorities. They defer general conclusions until they have made more exhaustive researches. The book is a valuable contribution to the history of the liquor traffic and displays a scientific calm sadly needed in the discussion of temperance questions.

CHARLES BEARD.

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The Policy and Administration of the Dutch in Java. By CLIVE DAY, Ph.D., Assistant Professor of Economic History in Yale University. New York, The Macmillan Co., 1904. — xxi, 434 pp.

Professor Day's book is an attempt to give a critical history of the Dutch policy and administration in Java from the earliest days of Dutch settlement in the island to the present time. The book is a valuable one, because there is practically no literature on the subject in the English language of a date subsequent to about 1860 and because the literature of a date precedent to 1860 is of a decidedly sketchy and non-comprehensive character. Professor Day not only covers the entire history of the island during the Dutch occupation, but explains the peculiarities of the Dutch colonial system by showing that they are largely a development of conditions existing in the island before the arrival of the Dutch.

One of the most marked results which the book achieves is the proof it furnishes that the vaunted culture system, when it was at its height of prosperity, was little removed from slavery and involuntary servitude, and that, in addition to the evils which are incident to such a method of solving the labor question, the culture system was accompanied by the disadvantages which attach to any system of governmental regulation of industry. Professor Day regards Money's book, *Java, or How to Govern a Colony* — which up to this time has been regarded as the best authority both on the culture system and on the general subject of Javanese administration — as inaccurate in its details and misleading in the general impressions which it conveys. Money apparently relied for his information very largely upon the impressions which he received during his stay in Java and from conversations with administrative officers and planters, whose interests were connected with a retention and development of the culture system. Professor Day asserts that the statements which Money makes are not borne out by the Dutch documents which form the basis of his own work.

Professor Day has apparently relied entirely on an investigation of the documentary literature of Javanese administration, and has not supplemented his investigation by a personal examination of the conditions of the island. He makes no mention, either in his preface or in the main body of the work, of any visit to Java. It is much to be regretted that he was unable to make such a visit; for, however careful an examination one may make of documents, the impression one gets in this way is apt to be almost as one-sided as that which is obtained merely from a visit. At the same time, all those interested in colonial

problems, and particularly in the problems arising in tropical colonies, owe Professor Day a debt of gratitude for his careful, laborious and exhaustive study of the sources of information accessible to the European student. His is by far the best book upon the administration of Java which has appeared in the English language.

F. J. G.

Mazzini. By BOLTON KING. London, J. M. Dent & Co.; New York, E. P. Dutton & Co.; 1902. — xv, 380 pp.

This is a volume in the series of Temple Biographies. The aim of the series, as explained in the preface by the editor, Mr. D. Macfadyen, is first, in a general way to contribute to that view of the relation of biography to history which was illustrated by Plutarch and Carlyle, and second, to emphasize the importance of those "men of the spirit," who have stimulated by their idealism movements which they lacked the practical wisdom to make successful.

There can be no room to doubt that Mazzini falls well within the scope of the series. He was easily chief of the host of political and social idealists, visionaries and fanatics who pervaded Europe — and indeed America — between 1815 and 1870. Personally, he was perhaps the most interesting of them all. To absolute unselfishness in his association with his fellows was added a lofty religious and moral enthusiasm and a high sensitiveness to the noblest influences of art and literature. He could and in some degree did play a creative rôle in these last fields of spirituality. But the bent of his fancy was very early turned to politics, where fancy plays its strangest pranks, and for forty years he harped incessantly upon the single chord — a unified Italy under a republican government.

That Mazzini contributed anything but persistent obstruction to the actual attainment of Italian unity, not even his biographer seems disposed to maintain. Mr. King tells the story of his various enterprises with fairness and skill, and in some cases with much sympathy. The Mazzinian philosophy also is set forth with probably more coherence than its own creator could have given to it. The net result of the whole book is, however, to give new confirmation to the view that a man of Mazzini's disposition ought to keep out, or be kept out, of political activities. Let him expend the uncontrollable force of his genius and emotions in founding a new religion or a new cult in music or some other art; the reforming of states and governments calls for

qualities that are not his. No significant loss to the sum total of human happiness ensued upon the publication of Mazzini's dreams and fancies about music and literature, but deep misery was brought upon millions of human beings by his unbalanced and irrational attempts to revolutionize Italy. Universal experience shows us, indeed, that agitators are inevitable, if not indispensable, in political progress. But no experience shows that humanity is more true to itself in eulogizing the fanatical agitator than in praising the sane statesman. In the long run history must revere not John Brown, but Abraham Lincoln, not Giuseppe Mazzini, but Camillo di Cavour.

W. A. D.

The Politics of Aristotle, with an Introduction, two Prefatory Essays and Notes Critical and Explanatory. By W. L. NEWMAN, Fellow of Balliol College, Oxford, The Clarendon Press, 1887 and 1902. — Four volumes, xx, 580; lxvii, 418; xlvi, 603; lxx, 708 pp.

In the body of writings that has come down to us under the name of Aristotle a prominent place is held by a work on the state — Πολιτικά — known among English-speaking scholars by the misleading title *The Politics*. From the point of view of subject matter one may describe the work as an account of the birth and growth of the body politic, its perfect form as imagined by the writer, the species of it that occurred in the Greek world, their pathology, and the prophylactics of their characteristic ills. This involves a discussion of the household, a criticism of preceding political theories (particularly Plato's), the exposition of general principles concerning the state, the question of the best form of government, the details of the ideal state (incomplete), the several forms of constitution and their decay, together with practical directions for politicians and statesmen. From the point of view of literature the *Politics* may be described as the result of Aristotle's lectures on the state. That it was published, at least as a whole, during the author's lifetime there is no good reason for thinking. The part dealing with the ideal state has literary finish, but it is incomplete and very likely never was completed.

The *Politics* has come down to us divided into eight books. That this division was made by Aristotle himself is improbable, but the division must be very ancient — seemingly at least as early as the edition of Andronicus of Rhodes in the first century B.C.; for by the division into eight books we must explain the present jumbled order of the text

as a whole, and that order seems to have been already established in the time of Augustus. As early as the fourteenth century it was observed that the present seventh and eighth books should come before the present fourth book, and in the last century it was made plain to many that the sixth book should precede the fifth. The order that is now widely accepted among scholars is 1, 2, 3, 7, 8, 4, 6, 5. But this is not the worst. The treatise opens with a sentence which is hopelessly illogical (though the editors are almost marvellously blind to the fact), and the text is disfigured throughout by evident breaks, dislocations of small sections, and interpolations. How all this came about is a question that has occupied much of the attention of Aristotelian scholars but can perhaps never be fully solved. A posthumous edition by pupils of an imperfectly arranged and incomplete mass of the master's manuscript is perhaps the simplest general solution.

By one of the curious fates of books our earliest text of the *Politics* as a whole is not in Greek. Save for a few fragments, the earliest Greek MSS. are of the fourteenth century; but about the year 1260, as it would appear, a Flemish Dominican, William of Moerbeke, put forth a translation of the *Politics* into bad Latin — a translation which, according to his light, was very faithful and literal. William — who, as a not unworthy reward for his study of Greek at a time when its voice was somewhat more than faint in Western Europe, became archbishop of Corinth — seems to have used a Greek manuscript of the late twelfth or early thirteenth century. His translation (the so-called *vetusta translatio* or *vetus versio*) has, therefore, approximately the value of a manuscript of that date. It is one of the merits of that distinguished Aristotelian scholar of the last century, Franz Susemihl, that in his edition of the *Politics* published in 1872 (the first of his three editions) he published a critical text of William's translation and thus brought it into due prominence.

Some twenty years ago Mr. W. L. Newman — following largely in the footsteps of Susemihl, from whom, as he tells us (vol. iii, p. iii), he "first learnt what the close study of a work of Aristotle's really meant" — undertook to edit the *Politics* with an English commentary. The first volume, made up of a vast introduction, and the second volume, containing the first two books of the *Politics* with commentary, appeared in 1887; but the other two volumes of the huge edition were not published till 1902. In considering the finished work we must, therefore, deal to some extent with what has been before the public for a number of years.

As in the case of other classical works, the task of an editor and commentator of the *Politics* is a composite one. He must determine as nearly as may be the original words of the author and he must explain those words, wherever they seem to require explanation, from the point of view of language and style, as well as from that of subject matter. Furthermore, he should analyze the work. In the case of the *Politics*, a writing of so great importance for students of history and political theory and practice, the editor should be familiar with subjects not always necessary to the philologist. Thus Mr. Newman's task was a very large one and difficult for any man to accomplish equally well throughout. We shall, therefore, be ready to treat with leniency defects in his edition. The fact that Mr. Newman's habit of mind is that of the student of history and literature rather than that of the philologist in the narrower sense should move the verbal critic to real admiration when he examines his labors upon the text. Mr. Newman is a good classical scholar, but he is no Bentley or Porson, to say the least. However, he sifts the evidence for the text of the *Politics* (including the *vetus versio* to the study of which he makes contributions in vol. ii, pp. xli-lxvii, and in vol. iii, pp. vii-xxv) with learning, intelligence and independence of judgment. That he committed himself at the start to the order of books 1, 2, 3, 7, 8, 4, 5, 6, we may regret — the more so perhaps for the misgiving that he seems to feel in the fourth volume (pp. 149 *et seq.*) — but his discussion of the arrangement of the work is careful and valuable.

It is a pity too, that the text is printed as it is. The present writer has no liking in general for editions in which a thin black line of Greek is placed on the page above a strip of critical notes, and that in its turn above a mass of more or less pertinent exegesis; but surely — especially in the case of such a text as that of the *Politics* — not only should diacritical marks be used pretty freely and according to an easily intelligible system in the text, but also the critical notes should stand on the same page with the text and not be put into a limbo between it and the commentary, as in the present edition.

Mr. Newman's English style is admirable; clear, dignified, elegant and calm, it reflects a scholarly, cultivated and unpedantic mind; but for all that the huge introduction is not easy reading. It is too discursive; there are too many side-lights, too many instances ancient and modern. Surely it would have been far better, had a very careful and precise analysis of the contents of the *Politics* been presented, and had all special points, of a nature to require more extended treatment than can well be given in a rightly proportioned commentary, been

relegated to separate short chapters or appendices. The work of the editor, while thus losing in apparent unity, would have gained much in real unity and in usefulness to the reader. The defects that have been indicated cannot be obviated by marginal analysis and full indices alone.

What has been said above about ancient and modern instances in the Introduction applies also to the commentary. There is here, as in the Introduction, much that is of great value to the student of the subject matter of the *Politics*; but there are those that would gladly dispense with anecdotes about President Buchanan and other more or less famous statesmen, and with a good deal else that has the air of being extracted from scrap-books, in order that either bulk might be lessened or space gained for matters possibly more vital.

Another matter that perhaps calls for attention here, and that might be emphasized by an editor, is the general thought and habit of mind of Aristotle as displayed in the *Politics*. That a philosopher considering the state, at the time when Alexander was carrying a flood of Hellenism into the East, should consider it from the point of view of the small city-state of the Greek world and practically from that point of view alone, argues a mind of considerable limitations. As a collector of material for scientific investigation, as a systematizer, as a terminologist, and, perhaps, in a smaller degree, as a critic, Aristotle possessed great ability; but he lacked the imaginative power of Plato and even Isocrates's vision of the mission of the Greek race. His lack of original genius on the one hand and his critical spirit on the other caused him to build upon Plato's foundation more perhaps than he knew; but it made him at the same time a carping critic of his master.

Students both of political science and of Greek literature, philosophy and philology will find much of value in Mr. Newman's stately volumes. If he has not produced the final English edition of Aristotle's *Politics*, he has yet labored well and placed scholars in his debt. The reviewer may be pardoned for expressing in conclusion the pious wish that one of his own countrymen might do even nearly as much as Mr. Newman has done for any portion of the writings of "*il maestro di color' che sanno*."

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BOOK NOTES.

Early Political Machinery in the United States, by George D. Luet-scher (Philadelphia, 1903), stands well above the average of doctors' dissertations. It is a careful study of practical political methods in the earliest days of our party organizations, and its purpose is to disclose the beginnings of the convention system in nominating candidates. Whether the author is entirely successful in establishing the thesis which he proposes, may be doubted by some. There is no doubt, however, that the pamphlet contains a large amount of very useful and suggestive information concerning a subject just now attracting much attention — the history of our party machinery.

In a third volume entitled *Select Statutes illustrative of the History of the United States, 1861-1898*, Professor McDonald completes the useful series which he has been publishing in the course of the last few years as an aid to the study of American history. This final volume shows, in the choice of documents and in the editorial notes, the same high standard of excellence which was exhibited in the preceding volumes. The necessity of compression has excluded many statutes which seem at the present time to be of very great importance. Nothing can be said, however, against the importance of those that are actually presented, and therefore the reader must be satisfied. With McPherson's *History of the Reconstruction* held at \$15 per volume by the second-hand dealers, Professor McDonald's presentation of leading documents in connection with reconstruction times certainly satisfies a much felt want.

An important *Bibliography of the Philippine Islands* (Part I, 398 pp.; Part II, 439 pp.) has appeared as Senate Document No. 74 of the Fifty-seventh Congress, Second Session. Part I, compiled under the direction of P. Lee Phillips, contains a list of books, official documents, maps, etc., all of which are in the library of Congress. The topical and chronological arrangement, with full subject, author and geographical indices, render the compilation convenient for use. Part II, written in Spanish, is entitled *A Philippine Catalogue*, and is the work of Dr. T. H. Pardo de Tavera, a native member of the Philippine Commission. The general introduction to the work states that this part "aims to be a complete bibliography," but as the author himself admits (p. 8) the list is not exhaustive. Dr. Pardo's annotations generally afford "an idea of what the book says," and in this respect are

decidedly superior to the few bibliographical notices of a clerical stamp scattered through Part I. In his list of the libraries that possess many works on the Philippines Señor Pardo fails to mention that belonging to the Compañía General de Tabacos de Filipinas at Barcelona, to which most of the Retana collection has been added. The value of the work would have been enhanced by substituting a genuine historical sketch of the Philippine Islands for the fragmentary information conveyed in the Introduction; by translating into English the bibliographical notices in Part I; by translating Part II entire, and appending to it a subject index.

Mr. Belfort Bax has completed his series of studies on the social side of the German Reformation in a volume entitled *The Rise and Fall of the Anabaptists* (Swan Sonnenschein, 406 pp.). In his first volume on *German Society at the Close of the Middle Ages*, Mr. Bax gave a lucid account of the economic changes due to the rise of capitalism at the commencement of the sixteenth century, and pointed out its relation to the break-up of the manorial system, the evolution of the money economy, the decay of the guilds, the growth of the merchant princes, and the development of free competition. In a second volume on the Peasant Wars, he showed how these facts inevitably led to the outbreak of the insurrections in 1525. In the present volume on the Anabaptists, he makes it clear how the same causes resulted a few years later in that economico-religious movement which culminated in the Reformation at Münster. He studies in some detail the communistic ideals of Münzer, Jan of Leyden, and Jan Matthys, and he points out how the social reforms proposed were based on the notion of a return to the economic conditions of the old village community. An original contribution to the subject is found in the chapter on the Anabaptist movement in England. It is quite possible to appreciate the value of Mr. Bax's historical studies and yet to deplore the somewhat irrelevant passages in which he tries to make propaganda for the modern socialist movement.

Dr. Theodor Sommerlad has followed up his investigations on the economic activity of the early church by a monograph on the economic theories of the church, under the title, *Das Wirtschaftsprogram der Kirche des Mittelalters* (Leipzig, Weber, 223 pp.). His description of the economic and social views of the New Testament covers a field that has been well worked of late, but his succeeding chapters on the economic life of the third century in Africa and Egypt, on the theoretical reaction against the economic life of the fourth century, and finally on the counter-reaction and the systematization of the new ideas

by Augustine, will be found helpful and interesting. The author has gone to the sources in every case, and while his conclusions are not very novel, they form a convenient repertory of the facts.

Recent writers in social and economic history have often called attention to that interesting and original form of barter known as "le commerce par dépôts," or "stummer Handel." Mr. P. J. Hamilton Grierson has now attempted to give an adequate description of this under the title of *The Silent Trade, a Contribution to the Early History of Human Intercourse* (Edinburgh, William Green & Sons, 112 pp.). The bibliography of travels and descriptive works covers fifteen pages, and Mr. Grierson has made good use of all this material in presenting a clear picture of the customs of the primitive market and its survivals in modern times.

Studies of municipal finance in the towns of mediæval Germany have of late become quite common. England and France, however, have suffered from the lack of any such investigation. A good beginning has now been made in the case of France in the elaborate work on the *Finances of the Commune of Douai from its origin to the fifteenth century*, by Georges Espinas (Paris, Picquart, 546 pp.). M. Espinas is the archivist-paleographer in the department of foreign affairs in Paris, and has already attracted the favorable notice of students of economic history by his work on the customs of the merchant guild of Saint-Omer, published two or three years ago. He belongs to the school of M. Pirenne and has evidently been much influenced by the latter's methods and conclusions. The investigation is based entirely upon manuscript material in Douai, and succeeds in presenting, although at considerable length, a very clear picture of the details of mediæval municipal revenue and expenditure. A striking feature of the book is the series of notes, in which the conditions at Douai are compared in almost every important point with those in the other French and German towns. Most of this comparison, however, is with the German towns, because of the paucity of material for the French communes. M. Espinas points out how the original general property tax was of democratic origin, and finally succumbed to the attacks of the aristocratic faction. An especially interesting part of his work is the account of the revenues from municipal property. The volume contains three long appendices; one on the sources, another giving a detailed topographical index, and the third including a number of important documents. Altogether, M. Espinas is to be thanked for a most excellent and scholarly investigation. Let us hope that it will be followed by similar studies in England and France.

Any one who wishes to be well-informed on the subject of cotton will do well to read Professor A. Oppel's *Die Baumwolle* (Leipzig, Duncker & Humblot, 1902). This work, prepared under the auspices of the cotton exchange of Bremen, contains in its 745 pages a brief history of the culture and manufacture of cotton, a description of prevailing methods of cultivation, a careful treatment of the trade in cotton and cotton goods, and of modern methods of manufacture. There are interesting chapters on the place of cotton in economic life and its influence upon commercial policy. The second half of the work treats in detail of the development of cotton production and of the manufacture of cotton goods in the principal countries. The text is admirably supplemented by maps and illustrations. On the whole, the book is one of the most useful of recent contributions to the literature on commerce.

The newest issue of the *Studies in Economics and Political Science* edited by Professor Hewins of the London School of Economics, is a portly volume by Miss Alice Effie Murray—a *History of the Commercial and Financial Relations between England and Ireland from the period of the Restoration* (London, King, 486 pp.). Miss Murray is one of the two women students who were the first to obtain the doctorate of the faculty of economics and political science in the London University, and her book is an altogether admirable and thorough-going piece of work. The history of the commercial relations between England and Ireland is not a pleasant one to relate. Dr. Murray has made excellent use of the original documents and of the pamphlet literature on the subject. After devoting a series of chapters to the barbarous restrictive legislation of England in the seventeenth century, she studies especially the progress of the woollen and linen industries and of Irish agriculture during the eighteenth century. She points out how it was that the free-trade era in the nineteenth century was so ruinous to Irish welfare, and she concludes with a chapter which makes it clear that the future of Ireland depends upon her agricultural progress together with the promotion of the minor cottage industries. A thorough bibliography and index complete an excellent work.

Some years ago Professor W. G. Sumner published a work on *The Financier and the Finances of the American Revolution*, in which an attempt was made to study the influence and the fortunes of Robert Morris. Since the appearance of that work, however, the sixteen manuscript volumes of the valuable Robert Morris papers have become available to students. Mr. Ellis P. Oberholtzer has made use of this opportunity by rewriting the history of the period under the title,

Robert Morris, Patriot and Financier (Macmillan, 1903, 372 pp.). We accordingly get a much more vivid and lifelike impression of the personality of that remarkable man, who practically bore on his shoulders the financial burden of the early years of the Confederacy, and whose kaleidoscopic changes of fortune were as sad as they were remarkable. Mr. Oberholtzer's volume will be indispensable to all students of the period.

Galiani has frequently been studied as the author of the celebrated dialogues on the grain trade. Comparatively little attention has however been paid to him as the real founder of the subjective theory of value. This attempt has now been made by Mr. Edouard Dessein, in what is evidently a doctor's dissertation, *Galiani et la question de la monnaie au XVIII^e siècle* (Langres, Imprimerie Champenoise, 200 pp.). These views of Galiani are contained in his treatise on money, which was written in Italian in 1750, but which really covers a far broader field than is indicated in the title. The monograph of M. Dessein is not remarkable for its profundity or its erudition, but it may serve a good purpose in calling attention to a somewhat neglected point in the history of economics.

The thanks of all economic students are due to Professor Hollander of Johns Hopkins University for the valuable reprints of economic tracts which he has undertaken. The Series for the year 1903 includes Ricardo, *Three Letters on the Price of Gold*; Malthus, *An Inquiry into the Nature and Progress of Rent*; West, *Essay on the Application of Capital to Land*; and Longe, *A Refutation of the Wage Fund Theory*. The first of these has never before been printed in monograph form, and the others have become quite scarce. Each tract contains a brief introductory note and some valuable text annotations by the editor. It is to be hoped that Professor Hollander's scheme will meet with sufficient financial success to warrant him in continuing the plan for another year, and in reprinting some of the scarcer seventeenth and eighteenth century tracts.

In the ten years that have elapsed since the publication of the first edition of Professor Cannan's *History of the Theories of Production and Distribution*, such substantial progress has been made in economic theory that the doctrines presented in that work, once looked upon as extremely radical, have come to be regarded as almost conservative. In his second edition (London, P. S. King & Son, 1903) the author has found it unnecessary to make any important changes in the body of the work; he has, however, added two sections, on "Changes in the Theories since 1848" and the "Usefulness of the Existing Theories."

which make up a convincing argument in behalf of the critical school of economic theory, of which Professor Cannan is perhaps the ablest representative.

While there have been many studies on the shifting and incidence of taxation, comparatively little attention has been paid to the effects of certain minor classes of taxes on transactions. Dr. Leo Petritsch, of the University of Gratz, has attempted to remedy this defect by a study of the shifting of taxes on stock-exchange transactions, under the name *Zur Lehre von der Überwälzung der Steuern mit besonderer Beziehung auf den Börsenverkehr*. (Graz, Leuschner und Lubensky, 85 pp.) The subject is really broader than that indicated in the title, for the author considers not only the tax on ordinary exchange transactions, but also the tax on futures and the tax on real estate. His conclusions, which are reached with much acumen, are that the important results are to be found in the indirect consequences, especially the effect on the formation and economic utilization of capital.

Students of public finance will be interested in the elaborate work on the taxation of tobacco and beer entitled *Tabakmonopol und Biersteuer*, by Dr. Eduard Naef, published as the third number of the *Züricher Volkswirtschaftliche Studien* (Zürich, Rascher, 360 pp.). Although primarily an attempt to study the situation from the point of view of Swiss interests, the monograph covers a much broader field, and includes a study of the conditions in Germany and France. It also makes an attempt to deal somewhat more fully with the problems of the incidence and effects of taxation on tobacco and beer.

The recent agitation of the tariff question in England has led to the compilation of a work entitled *Free Trade and other Fundamental Doctrines of the Manchester School*, edited by Francis W. Hirst (Harpers, 520 pp.). The volume contains most of the important speeches and papers of Cobden, Bright, Hume, and some other leaders of the Anti-Corn-Law League. They are arranged in five parts under the heads of England, Ireland and America, the corn laws, wars and armaments, colonial and fiscal policy, and social reform. Mr. Hirst provides the volume with an introduction which convinces us that the Manchester School is by no means entirely a thing of the past.

Another View of Industrialism (New York, E. P. Dutton & Co., 1903) is the modest title under which Mr. William Mitchell Bowack presents his opinions on economic subjects generally. The distinguishing feature of the work is its point of view, which is "the subjective of Schopenhauer"—whatever that may mean. The author appears to have read a few works on economics, and has arrived at

some conclusions that are sound, though very old. On the whole, the book is by no means the worst that has ever been written under the name of economics; but it comes near being the most tiresome. Throughout, it is a mere aggregation of opinions, most of them irrelevant to anything whatsoever, advanced with a crude assurance of infallibility that is explicable only in a disciple of Schopenhauer. The only interesting thing in the book is its style, one specimen of which has already become classic: "But as you immediate your timeous relations in transactions you reduce the extent of the capital required."

Oliver R. Trowbridge's book on *Bisocialism* (New York and Chicago, Moody Publishing Co., 1903) furnishes to its readers a profusion of new economic terms, most of which are made to convey a clear meaning. It advocates "bisocialism" or the socialization of "all ground values and all public utility franchise values," as distinguished from "omnisocialism," which would take all capital and the direction of all industry into the hands of the state. Unlike the original advocates of the single tax the author makes much of the socialistic features of his plan, and declares that under it what he terms the "sporadic socialism" which exists within the present industrial system will be retained and extended, though this extension will encounter definite limitations. While there is a certain moderation in the scope of the proposed reforms, there is none in the manner of introducing them. A bald confiscation is advocated on grounds which claim to be ethical. The economic argument in favor of these measures evinces the same belief in the supreme efficacy of this seizure of land and franchise values as a cure-all for industrial evils which is common among persons who are entangled in the logical meshes of the single-tax argument.

Mr. James H. Bridge has edited, with an introductory chapter, a series of magazine articles and addresses on the trust question by Charles R. Flint, J. J. Hill, S. C. T. Dodd, and F. B. Thurber. As these articles are all exceedingly optimistic in tone, the volume is fitly named *The Trust; Its Book* (Doubleday, Page and Co., 255 pp.). Not all the statements are quite so extreme as that of Mr. Dodd, who, in his description of pre-capitalistic days in England, gravely asserts that the "purest country air then was fouler than the air of our city slums." The book will be useful to those who desire to know what the promoters of modern trusts think of their own handiwork.

George L. Bolen's *Plain Facts as to the Trusts and the Tariff* (London and New York, The Macmillan Co., 1902), is a readable and useful work. It recounts the growth of trusts, traces the sources of their

power for good and evil, and presents the various plans for dealing with them which are worthy of attention. It takes a moderate and sane view of the situation created by the trusts and of the policy which their presence calls for. The latter part of the book is occupied by a discussion of the tariff. The author refutes some venerable claims as to the effect of protection on the rate of wages and contends that the time for a reduction of exorbitant duties is at hand.

Mr. James Howard Bridge's *Inside History of the Carnegie Company* (New York, The Aldine Book Company, 1903) is devoted to the task of proving that the greatness of the Carnegie Company is in no way due to the wisdom and energy of Mr. Carnegie. Brute luck, and the perseverance of partners of whom the public have never heard, placed the Carnegie Company in its predominant position in the American iron and steel industry, if we are to accept Mr. Bridge's views as correct. The *History* is interesting — though somewhat gossipy — and will prove of some value to students of the industrial history of the United States.

The literature on the labor problem in the United States is so meagre that Mr. John Mitchell's judicious, if somewhat popular, discussion of *Organized Labor, its Problems, Purposes and Ideals, and the Present and Future of American Wage Earners* (American Book and Bible House, Philadelphia, 1903, 436 pp.) deserves a cordial reception. It is written in a terse and forceful style and fully makes up for its dearth of historical and statistical information by its sane treatment of phases of the labor movement touching which the author's opinion is of great value. As was to be expected, special chapters are devoted to the anthracite coal strike in which Mr. Mitchell played such a conspicuous and creditable rôle. It is to be regretted, on some accounts, that even greater prominence was not given to this strike, to the exclusion of other topics on which the author has little or nothing to say that is not matter of common knowledge. Of the fifty-one chapters into which the book is divided at least half-a-dozen might have been omitted without any serious loss to the reader. This does not, however, lessen the value of the really admirable discussions of practical phases of trade-unions in the United States in other chapters.

The interesting experiment which is being tried in Holland of settling differences between employers and employees by means of elected labor boards is the subject of a valuable monograph, *Die holländischen Arbeitskammern, ihre Entstehung, Organisation und Wirksamkeit* (Tübingen und Leipzig, J. C. B. Mohr, 1903, xii, 193 pp.) by Dr. Bernhard Harms. The steps preceding the enactment of the law

of 1897 authorizing these boards are reviewed, their organization is described, and the results of their activity and conclusions in reference to their defects are presented. The law directs the minister of labor, trade and industry to create boards consisting of an equal number of representatives of workmen and of employers for such communes, either single or in combination, and for such trades, either single or combined, as he deems desirable, and to determine the number of members (usually ten) to be elected to each one. These boards choose an executive committee, consisting of one presiding officer and one member from each side, and the presiding officers serve alternately for periods of six months. The purpose of the boards is to collect information in reference to conditions of employment for the benefit either of workmen, of employers or of government officials; to settle disputes between workmen and employers; and to attempt to conciliate the contending parties when strikes or lock-outs occur. They are purely voluntary bodies, notwithstanding their official character, and may be rendered helpless by the refusal of either employers or workmen to continue to participate in them. The conclusion of the author's study is that the public labor boards have accomplished a useful purpose in making the relations between employers and employees more friendly and cordial, but that they have failed of their chief purpose because of the unwillingness of employers to submit to their decisions. He suggests changes in their organization which would make them more efficient, but questions the ability of mere voluntary bodies to secure industrial peace, especially in a country like Holland, in which trade unions are still in their infancy.

Some of the addresses given at the conference of employers and employed which was held in Minneapolis in the fall of 1902, were published in *Public Policy* and are now collected and issued in a volume from the office of that paper. (*Employers and Employes*. The Public Policy Co., Chicago, 1903.) They constitute a symposium on the subject of the best method of dealing with labor troubles, and reveal the attitude of different classes of men toward such measures as are before the public. Of course the views do not entirely harmonize, but that fact does not in any way impair the usefulness of the book.

Mrs. John Van Vorst and Marie Van Vorst in an interesting volume, *The Woman Who Toils* (Doubleday, Page & Co., 1903) tell of their experiences as mill hands in various industrial centers. The authors, as we are again and again informed, belong to the cultured class, and descended for a few weeks into the ranks of labor in order to act as spokeswomen for their less fortunate sisters. Naturally, they found

the life of the mill hand hard, inæsthetic, unhealthy. They discovered also that there were among the workers persons who had potentialities which made them in a sense kin to the cultured. Mrs. Van Vorst was especially struck by the sacrifices poor girls make in order to secure cheap finery, by their lack of serious purpose and their aversion to the state of wifehood and motherhood. She regards it as a great evil that those who are provided with necessities by male members of their family should compete with those whose sole means of support is their own labor; and she suggests that those who do not need wages for support should interest themselves in the artistic handicrafts. This is the sole remedy she has to propose for the malady of social decay which she describes. One can but believe that if she had devoted years instead of weeks to her investigation, she would have found the malady less acute, but more deep-seated; and her remedy would have been of quite another nature. Of the part of the book written by Miss Van Vorst, the most important chapter deals with life in a Southern mill town, where, it would appear, the social conditions of the women wage-earners are most deplorable.

A book full of illumination and inspiration is Miss Jane Addams's unpretentious volume on *Democracy and Social Ethics* (New York, The Macmillan Company, 1902). Many a ponderous work on the nature of democracy has failed to get so near to the heart of things as do Miss Addams's studies, born of her intimate knowledge of all sorts and conditions of human beings. No one has ever shown more clearly just why it is that such organizations as Tammany have so tremendous a hold upon the poorer masses of a great city population. It is a phenomenon which can be understood only when we see, as Miss Addams has seen, how the ethics of humanity, of citizenship in a broad sense, of the new and the progressive, conflict in daily life with the ethics of family responsibility, of personal allegiance to the friend who has offered a helping hand. The chapters of this book touch on charitable effort, filial relations, household adjustments, industrial amelioration, educational methods and political reforms.

Le Progrès Social, by Louis Skarzynski (Paris, Felix Alcan, 1901), is a succinct manual of social reform which ought to be in the hands of every practical sociologist. It describes, briefly but adequately, recent attempts, public and private, to ameliorate the conditions of the poorer classes of Europe. Although M. Skarzynski is obviously an enthusiast, his work is for the most part entirely scientific.

Messrs. Rowntree and Sherwell, whose exhaustive study of *The Temperance Problem and Social Reform* has become a veritable text-

book for temperance advocates in Great Britain, have supplemented that work with a useful discussion of *Public Control of the Liquor Traffic, being a Review of the Scandinavian Experiment in the Light of recent Experience* (London, Grant Richards, 1903, xxx, 296 pp.), in which critics of the "Gothenburg" or "Norwegian" system of control are answered and reasons are urged in support of the introduction of that system into Great Britain. Although controversial in tone, the book gives evidence of careful preparation, and may be commended as a convenient summary of the latest information bearing upon the topic considered.

Another doctoral dissertation from the University of Pennsylvania of noteworthy excellence is that of Carl Kelsey entitled, *The Negro Farmer* (Chicago, Jennings & Pye, 1903). It embodies a study of existing conditions in the South, and its leading purpose is to place in a proper light the relation of various phases of negro development to Southern geology and geography. The text of the monograph puts in some sort of coherency a large number of familiar but rarely so well-correlated facts; but the distinctive value of the work is an admirable series of well-executed and easily understood maps showing for each of the Southern states the distribution of the negroes by counties and in reference to the character of the land, the classification of regions under the latter head including the metamorphic or piedmont, pine hills, pine flats, sand hills, black prairie and alluvial. We know of no other maps that can be compared with these for comprehensiveness and convenience; and the light thrown on the much discussed race problem by a mere glance at them almost justifies the demand that any one undertaking to talk or write on that problem should, in the interest of public order, be required by law to be familiar with them. Not the least significant of the facts emphasized by Dr. Kelsey in his text and illustrated by the maps is, that where there are the most negroes there are the fewest indications of a race problem.

An admirable example of close and comprehensive scientific description is *The Physical Geography of New York State*, by Professor Ralph Tarr (New York, The Macmillan Company, 1902). The state of New York happens to be a region of peculiar physiographic interest on account of the extensive effects of glacial action, which created the system of inland lakes, and on account of the great Niagara gorge. The description of these and other features leads up to a final chapter on the relation of the physiographic features of the state to its industrial development. Students of economics could not do better than to examine this book, and to study with some care its concluding chapter.

To the student of political science much of interest will be found in the first two parts of Dr. D. B. Macdonald's *Development of Muslim Theology, Jurisprudence and Constitutional Theory* (Scribners, 1903). These two parts deal respectively with constitutional theory and jurisprudence. The author is very successful in applying the categories and terminology of Christian politics and law to the ideas of the Mohammedans, but the result is an exceedingly queer "system." To parallel it in West European experience, one must recur to a time a millennium in the past. The sketch makes it clear that Islam has no message for Christendom to-day in regard to political and legal science. At the same time the knowledge of what passes for such science among the Mohammedans is bound to be useful to the Christian whose mission, whether political or religious, brings him into close relations with them.

German Ambitions, by "Vigilans et Æquus" (New York, G. P. Putnam's Sons; London, Smith, Elder & Co., 1903, xi, 132 pp.) is a book which should never have been written. It is calculated to excite hostility and strife where friendship and harmony should reign. It is the most contemptible essay yet made to secure the friendship of the United States for Great Britain by exciting hostility to Germany. By the concealment of his true name, the author appears to manifest his own appreciation of the meanness of his work.

Mr. John R. Dos Passos's *The Anglo-Saxon Century* (G. P. Putnam's Sons, 1903. — xiii, 242 pp.), deals with the same subject as the preceding work, but it is written with an altogether different spirit and purpose. The author establishes in the most convincing manner the proposition that Great Britain and the United States are natural allies in working out the problem of world civilization; but he does it in a spirit of friendship for all nations and does not anywhere attempt to play upon the meaner passions of human nature in order to secure the end sought. He works out his plan with much particularity and presents it quite clearly. A possible criticism is that the author overlooks the fact that an alliance must precede the attainment of the results which he desires. Moreover, Mr. Dos Passos does not touch upon one thing which is probably essential to the bringing together of Great Britain and the United States; that Germany shall be included in the general understanding. Otherwise, Germany would be compelled to enter upon an alliance with Russia; and in such an event, she would drag the mass of continental Europe with her. Of what use would close friendship with Great Britain be to the United States with the whole of continental Europe arrayed against those two nations?

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POLITICAL SCIENCE QUARTERLY.

LEGAL MONOPOLY.¹

INDUSTRIAL monopoly rests on law. Experience does not show that any one man has the wealth, ability and daring to obtain individual ownership of all the coal mines, iron mills or oil refineries in the United States. Monopoly in production can thus be obtained and maintained only under laws that protect combinations of natural persons for that object.

Promoters of industrial monopolies well know the source of their powers. Within the last quarter of a century combinations to control production and prices of staple commodities have taken in succession four distinct forms: the pool, the trust agreement, the stockholding corporation, and the corporation owning a majority of all the manufacturing plants of a particular kind. As the courts have in turn refused legal support to each of the first three forms of combination, their promoters have adopted the succeeding form. The present form of combination, the corporation with a monopoly in manufacturing plants and therefore in their products, is quite as much the creature and creation of the law as were any that have preceded it. Repeal charters that authorize corporations to own or operate plants of the same sort in more than one state, and industrial trusts will disappear. Revoke licenses that permit foreign corporations to monopolize factories in every state, and production will again be regulated by competition. Industrial monopoly in its present form is thus dependent not only on the laws of states that grant roving commis-

¹ Copyright, 1904, by Alton D. Adams.

sions in corporate charters, but also on the laws of all the states into which the foreign corporation goes to acquire factories. The extent to which legal support is thus granted to industrial trusts is shown by the fact that in the year 1900, 185 corporations owned 2,216 manufacturing plants scattered over forty-two states and territories.¹

Monopoly effected by means of a corporation is defended on the assumption that the combination of any number of persons and factories under a corporate charter is legal, though the combination of the same persons and factories in any other way, for the same purpose of monopoly, would be illegal. According to this view the vice of monopoly is not due to its effects on production and prices, but simply to the way in which it is accomplished.

A few decisions of courts rendered during the last decade give some support to monopoly in a single corporation. A case of this sort was *Oakdale Company v. Garst*,² decided in 1894, where an injunction was sought to restrain Garst from violating a contract that he had made not to engage in the manufacture of oleomargarine during a period of five years. It appeared in this case that the Oakdale Company had purchased the business of three out of the four companies in New England that were engaged in this line of manufacture. The business of Garst was one of those purchased by the new corporation, but he claimed that his contract was void because of the tendency of the combination to create a monopoly. The court granted the injunction against Garst, but put it distinctly on the ground that there was neither monopoly nor an approach to it by the combination in question, because another strong, independent company remained in New England and there were companies in other parts of the country that might compete in the same field.

Perhaps the strongest case supporting the legal right of a corporation to create a virtual monopoly, by the purchase of a majority of the factories in a particular line, is that of *Trenton Potteries Company v. Oliphant*,³ decided by the court of New Jersey in 1899. It appeared in this case that, in 1892, there were nine concerns in the United States engaged in the manufacture of san-

¹ U. S. Census, vol. vii, p. lxxv.

² 18 R. I. 484.

³ 58 N. J. Equity, 507.

itary pottery ware, and seven of these were located in Trenton, New Jersey. In order to control the prices of this class of pottery, the Trenton Potteries Company was formed under a New Jersey charter and purchased five of the pottery plants in Trenton. Each seller of a pottery plant agreed not to engage in the manufacture of pottery ware in any part of the United States, except Nevada and Arizona, during a period of fifty years. Oliphant was the owner of one of the plants sold to the Trenton Company, and sometime thereafter he again engaged in the manufacture of sanitary ware contrary to his contract. Suit was then brought asking for an injunction against this manufacture as carried on by Oliphant and others. The lower court held that the partial monopoly established by the Trenton Potteries Company was against public policy, and dismissed the suit.¹ On appeal to the highest state court, the decision of the lower court was reversed, and an injunction was granted as to manufacture in New Jersey, but not as to other parts of the territory covered by the contract, because it was not proved that the business sold by Oliphant extended into other states. The court justified the aid thus given to the combination represented by the corporation on the ground that the purchase of competing plants was authorized by its charter, and that the public policy of the state had thus been fixed by the legislature. On this point the language of the opinion was: "The grant of the legislature authorizing and permitting such acts must fix for the courts the character and limit of public policy in that regard."

In a number of other cases state courts have supported minor combinations of manufacturing plants in the hands of a single corporation. It is believed, however, that no court of last resort has held that a corporation may legally establish a complete or virtual monopoly in a particular line by the purchase of most or all of the manufacturing plants of a particular sort in the United States.

The strongest case in the federal courts supporting industrial monopoly in the ownership of factories seems to be that of *Metcalf v. American School Furniture Company*,² decided in 1903,

¹ 56 N. J. Equity, 680.

² 122 Fed. Rep. 115.

where a minority stockholder sought to have the sale of the plant of his company set aside. It appeared that the American Company was formed to acquire the plants of other concerns engaged in the manufacture of school furniture, and thus to create some degree of monopoly in that business. A part of the defence in the case was that the transfer of the plant in question was entirely collateral to any intention of the American Company to create a monopoly. The court accepted this view of the transaction and refused to set aside the sale, saying in part:

Great stress is laid upon the point that the transfer of the good will and plant of the Buffalo Company is entirely separate and independent of any intention by the directors of the American Company to create a monopoly in restraint of trade. Careful consideration of the questions here involved constrains me, though with hesitation, to accept this view of the transaction charged in the bill.

As may be seen from this quotation, the decision here went on the ground that the purchase in question was not a part of the scheme to create a monopoly; and the implication clearly was that the scheme itself was illegal.

Turning to the Supreme Court of the United States, it does not appear that there is a decision or even a dictum to the effect that a combination of natural persons in a single corporation with the intent and effect of creating a complete or virtual monopoly in the manufacture or production of a given commodity is legal. On the contrary there are repeated dicta that such a combination is illegal, like the other forms of combination that have preceded it. A case sometimes cited to support the view that the purchase of independent factories so as to give a single corporation a monopoly in production is legal, is that of *United States v. E. C. Knight Company*,¹ decided in 1895. It will be seen on examination, however, that this case leads to no such conclusion. As to the facts of this case, it is to be noted that the monopoly was created not by the direct purchase of the four Philadelphia sugar refineries by the American Sugar Refining Company, but by the purchase of the stocks of the several corporations owning these

¹ 156 U. S. 1.

refineries. This form of combination, that is the holding by one corporation of the stocks of other corporations to control production or prices, like the pool and the trust agreement, has generally been held illegal by both state and federal courts. In this case the illegality of the combination was of no moment because its acts did not fall within the prohibition of the statute¹ under which the suit was brought, according to the construction given that statute by a majority of the court. On this point the court said:

The fundamental question is whether, conceding that the existence of a monopoly in manufacture is established by the evidence, that monopoly can be directly suppressed under the Act of Congress in the mode attempted by this bill. . . . Congress did not attempt thereby to assert the power to deal with monopoly directly as such.

On these grounds the court dismissed the bill that had been brought to set aside the sale of stocks of the E. C. Knight and other corporations to the American Sugar Refining Company.

Another case that is sometimes supposed to give the color of legality to monopoly secured by a single corporation in the ownership of factories is *Dickerman v. Trust Company*,² decided in 1900. Suit in this case was brought to foreclose a mortgage given by the Columbia Straw Paper Company on some forty mills that it had purchased. The bonds secured by this mortgage were not paid when due, and the trust company holding the mortgage brought suit, which was defended on the ground that the corporation was an unlawful combination. The court rejected this defense and said in part:

If this were a proceeding in *quo warranto* to attack the organization of the corporation . . . or an action against a member of the combination to enforce any of the provisions of the original contract, the validity of such a contract would become a material inquiry. But in a suit to foreclose a mortgage upon the property of the concern it is difficult to see how the purpose for which the corporation was originally organized can become a material inquiry. . . . It would seem a curious defense if a mortgagor could set up against the mortgage that the property cov-

¹ 26 Statutes at Large, 209.

² 176 U. S. 181.

ered by it was used for an illegal purpose unknown to the mortgagee, as, for instance, gambling, and therefore that the mortgage was invalid.

The plain implication here is that the combination represented by the corporation was illegal and would have been so held in a case where that question was involved.

Opposed to the few opinions and dicta where the legality of some degree of monopoly created by the purchase of factories by a single corporation has been upheld, a much larger number of decisions take the opposite view. *Richardson v. Buhl*,¹ decided in 1889, was an action brought to recover money that had been paid under a contract to promote the formation of the Diamond Match Company, which had been incorporated to purchase plants engaged in the manufacture of friction matches. Each person selling a match factory was required to give the Diamond Match Company a bond not to engage in the business in any way that would conflict with the interests of that company. In the course of its opinion the court denied recovery, saying:

All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise, or any of the necessities of life, are monopolies, and intolerable, and ought to receive the condemnation of all courts. In my judgment, not only is the enterprise in which the Diamond Match Company is engaged an unlawful one, but the contract in question in this case, being made to further its objects and purposes, is void upon the ground that it is against public policy.

The important point in this case is that a combination of natural persons for the purpose of monopoly is not made legal by the use of the corporate form, and that it is illegal for a corporation to obtain a monopoly of manufactured products by the purchase of all the instruments employed in their production. It is to be noted that the Michigan court was not construing a statute in this case, but decided it on the principles of the common law. In other words, the court made it a part of the common law of Michigan that monopoly of the instruments of production in any line, acquired by a single corporation through the purchase of

¹ 77 Michigan, 632.

these instruments, is illegal. To reach this conclusion the court evidently went on the principle announced by it in the case of *Wooden Ware Association v. Starkey*,¹ decided in 1890, where an injunction to enforce a contract in restraint of trade was refused, and it was said:

It is the duty of the court to see that the public interests are not in any manner jeopardized. The state has the welfare of all its citizens in keeping, and the public interest is the pole-star to all judicial inquiries.

In *Distilling and Cattle Feeding Company v. The People*,² the Illinois court considered the legality of the purchase by that company of a large number of distillery plants to establish a virtual monopoly in the business. The action was *quo warranto*, brought by the attorney-general to annul the corporate charter of the domestic corporation under the Illinois anti-trust law.³ In its judgment of ouster against the corporation the court said:

There can be no doubt, we think, that the Distillers' and Cattle Feeders' Trust, which preceded the incorporation of the defendant, was an organization which contravened well-established principles of public policy, and that it was therefore illegal. . . .

But the defendant contends that, while this may all be so, the change in organization from an unincorporated association to a corporation, and the change in the mode of holding the distillery properties of the various corporations formerly belonging to the trust, by surrendering the stock of the corporations, by means of which the control of those properties was formerly maintained, and having the properties themselves transferred and conveyed directly to the defendant corporation, have purged the combination of its illegality. It must be admitted that these changes, so far as they have any effect upon the rights or interests of the former stockholders in those corporations or of the public, are formal rather than substantial. The same interests are controlled in substantially the same way and by the same agencies as before. The nine trustees of the trust, who, as the holders of all the capital stock of the corporations and as a majority of the directors of each, controlled such corporate property, became the subscribers for all the stock of the new corporation, and its board of directors. The

¹ 84 Michigan, 76.

² 156 Illinois, 448.

³ Laws of 1893, p. 182.

conveyance and transfer of the properties of the constituent companies to the new corporation was merely a transfer by the trustees to themselves, though in a slightly different capacity, and the former stockholders in the constituent companies simply exchanged their trust certificates, share for share, for stock in the new corporation. That corporation thus succeeds to the trust, and its operations are to be carried on in the same way, for the same purposes, and by the same agencies, as before. The trust, then, being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country — over production and prices — and the virtual monopoly formerly held by the trust are in no degree changed or relaxed, but the methods and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons.

In this case the defendant, a domestic corporation, lost its charter because its stockholders, in its formation and management, had combined to create a monopoly. The Illinois statute provided:

That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of two or more of them, for either any or all of the following purposes.¹ . . .

In no part of the act was it provided that a single corporation or a combination of its stockholders acting in its name should be regarded as a trust. So far as the statute was concerned, the court might have acted on the fiction that a corporation is a single person, and so might have held that no combination existed. But the court refused to close its eyes to the patent fact that a combination does not cease to be such because the persons composing it have been granted some special privileges by a legislature. The court looked through the fictitious legal person and saw the real

¹ *Laws of 1893*, p. 182.

persons that gave it thought, life and action, and who expected to profit by the monopoly they had created.

In the foregoing case a domestic corporation lost its charter. In *Harding v. American Glucose Company*,¹ decided in 1899, the Illinois court had to pass on a similar state of facts as to a foreign corporation. A New Jersey corporation in this case had been formed to purchase the manufacturing plants of the American Glucose Company, another New Jersey corporation owning a factory in Illinois, and of five other corporations. Each of the selling corporations and its officers were bound by agreement with the new corporation not to engage in the manufacture of glucose within one thousand miles of Chicago. Harding, a stockholder of the American Glucose Company, brought an action to have the transfer of the plant of this corporation to the new corporation annulled. The court set aside the deed by which the property had been conveyed, saying:

It makes no difference whether the combination is effected through the instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation, and conveying to it all the property of the competing corporations. . . . Citizens of Illinois cannot evade the laws of Illinois passed against trusts and combines and defy the public policy of the state, by going into a foreign state, and chartering a corporation to do business in this state in violation of its laws.

The decision of this case was based in part on the Illinois statutes² against trusts; but, as in *Distilling and Cattle Feeding Company v. The People*,³ the court seems to have exercised common-law powers, and gone beyond the mere wording of the statutes, by holding that a corporation formed for the purpose of monopoly is an illegal combination. A similar result was reached by the Missouri court in the case of *National Lead Company v. Grote Paint Store Company*,⁴ decided in 1899. In 1891 the National Lead Trust held the stocks of a number of corporations that manufactured the greater part of the entire output of white lead in the United States. Even at that date it was clear enough that

¹ 182 Illinois, 551.

² Statutes of 1891, p. 206; 1893, p. 182.

³ 156 Illinois, 448.

⁴ 80 Missouri App. Rep. 247.

monopoly based on the deposit of corporate stocks with trustees was illegal, and persons interested in the lead trust therefore obtained a corporate charter for the National Lead Company in New Jersey. This corporation purchased the manufacturing plants of the various companies that were interested in the trust, and thus secured a large degree of monopoly in the supply of white lead. The National Lead Company had a St. Louis branch, and sold white lead there to the defendant in this case. Suit was brought to obtain payment for this lead, and it was pleaded in defense that the National Lead Company was an illegal combination, and that therefore the defendant was not liable for the price of the lead, under the Missouri trust act ¹ of 1891. This act provided that any combination between persons, partnerships or corporations to regulate or fix the price of any commodity should be deemed a conspiracy, and that the persons or corporations engaged therein should be subject to certain penalties, among which was the inability to recover the price of goods sold. Nowhere in the act was it stated that a single corporation which secured a monopoly should be deemed guilty of such conspiracy. In holding that the corporation could not recover for the goods sold, the court said, in part:

Hence it must follow that if the stockholders and governing officers of the plaintiff corporation combined with each other to violate any of the provisions of the section under review through the instrumentality of their corporate entity, then the corporation composed by them was a party to such illegal combination within both the letter and the spirit of the above section of the act of 1891. Or, concretely stated, that a combination which is illegal under the anti-trust law, cannot be operated under the cloak of a corporation by its constituent members or governing bodies.

From the foregoing cases it appears that the courts of three states, Michigan, Illinois and Missouri, have reached the conclusion that the organization and management of a corporation to secure a monopoly in the ownership of manufacturing plants of any sort is an illegal combination of the stockholders of that corporation.

¹ Laws of 1891, p. 186.

Similar results have been reached in the federal courts. The National Harrow Company was formed to manufacture harrows and, apparently, to control that line of business. This company purchased some eighty-five patents on harrows from a number of concerns engaged in their manufacture, paying therefor largely by issues of capital stock. Each manufacturer of harrows was then licensed to continue his business as before, except that a royalty of one dollar was to be paid to the National Harrow Company on each harrow sold, and each manufacturer was bound to make only the style of harrow covered by his license and to sell at prices fixed by the National Harrow Company. One Quick infringed a patent thus secured by the National Harrow Company, and that company brought its bill in the federal court for an injunction against him. In its opinion refusing the injunction the court said:

It seems to me that such a combination is illegal. . . . It seems to me that the court cannot sustain the present bill without giving aid to the unlawful combination or trust represented by the complainant.

This case, *National Harrow Company v. Quick*,¹ decided in 1895, came up in the Indiana district of the federal court. In the following year the United States circuit court decided the case of *National Harrow Company v. Hench*,² which came up from a Pennsylvania district. In this case Hench, one of the licensed manufacturers of harrows, had broken his contract with the National Harrow Company by selling harrows at prices below those fixed by that company. Thereupon the National Harrow Company brought its bill in equity asking for damages and an injunction to prevent further violation of the license contract by Hench. In the course of its opinion denying the prayer of the bill the court said:

Now, it is quite evident to me, as well by the papers themselves, as from the testimony of witnesses, that this scheme was devised for the purpose of regulating and enhancing prices for float spring-tooth harrows, and controlling the manufacture thereof throughout the entire

¹ 67 Fed. Rep. 130.

² 76 Fed. Rep. 667.

country, and that the combination, especially by force of the numbers engaged therein, tends to stifle all competition in an important branch of business. I am not aware that such a far-reaching combination as is here disclosed has ever been judicially sustained.

In both of the cases just considered the federal courts seem to have gone on the ground that the purchase by the single corporation of eighty-five patents covering nearly all the styles of harrows in use, with the evident intention to secure a monopoly and control manufacture and prices, was itself illegal. Other attempts of single corporations to monopolize the manufacture of particular products have been regarded in the same light. Before 1891 the American Biscuit and Manufacturing Company had purchased thirty-five bakeries located in twelve states. One of these bakeries was sold to the Biscuit Company by Klotz, who was thereupon employed by the company as its agent to operate the bakery plant and its business. Klotz subsequently determined to rescind the sale he had made, began to operate the bakery in his own name, and tendered back to the Biscuit Company the shares of their capital stock which had been given to him in payment for the plant. On this state of facts the Biscuit Company brought an equity suit in the Federal court to prevent further operation of the baking plant by Klotz. This suit was decided by the circuit court for a Louisiana district in *American Biscuit and Manufacturing Company v. Klotz*,¹ in 1901. A Louisiana statute² had declared any combination to monopolize commodities illegal. Referring to this statute and to the federal Anti-Trust Act the court said in part, while refusing to interfere with Klotz in his possession of the bakery:

The statutes show that the evil was the hindrance and oppression in trade and commerce wrought by its absorption in the hands of a few, so that the prices would be in danger of being arbitrarily and exorbitantly fixed, because all competition would be swallowed up, so that the man of small means would find himself excluded from the restrained or monopolized trade or commerce as absolutely as if kept out by law or force. If this is the meaning of the defining words, does not this

¹ 44 Fed. Rep. 721.

² Statute of July 5, 1890.

corporation, thus glutted with the thirty-five industries of twelve states, disclose an "attempt to monopolize"? So far, therefore, as the complainant's business is a combination in restraint of trade, or is an attempt to monopolize or combine, in the form of a trust, or otherwise, any part of trade or commerce, as these words are properly defined, the law stamps it as unlawful, and the courts should not encourage it.

Another case which involved similar facts, and in which a like result was reached, came before the United States court of appeals from a Michigan district, *viz.*, *McCutcheon v. Merz Capsule Company*,¹ decided in 1896. A New Jersey corporation, the United States Capsule Company, was organized in 1893 to purchase the plants and business of four concerns engaged in the manufacture of gelatine capsules. The Merz Capsule Company was one of these concerns. It executed a deed of its plant to the United States Capsule Company on December 21, 1893, and took back on that date a lease of the same plant in order to work up stock not included in the sale. In payment for its plant the Merz Capsule Company was to receive stock and bonds of the new corporation, the bonds being secured by a mortgage on all its property. Before the above named lease expired, the Merz Company determined to rescind the sale of its property to the United States Capsule Company, and accordingly tendered back the capital stock that had been received in part payment for the plant, and gave notice that it would not carry out the agreement. On this state of facts the United States Capsule Company endeavored to get possession of the plant of the Merz Capsule Company by force, and the latter company brought its bill in equity, asking that the agreements and conveyances entered into as to its plant and business be cancelled, and that the United States Capsule Company be enjoined from interfering with the property in question. The decree of the court affirmed the illegality of the agreement and deed mentioned, and restrained the United States Capsule Company from asserting any title or right to possession under them, saying in part:

Under all these circumstances, to hold that the complainant is estopped to rely upon the illegality of the agreement and conveyance to which it

¹ 37 U. S. Appeals, 586.

was a party would be to effectuate an unexecuted, unlawful object, and aid in the defeat of a legal prohibition. The door of this court should not be closed against one seeking to extricate himself from an unlawful connection, provided relief is sought without delay and before the contract is executed, or other persons have irrevocably acted in reliance upon its supposed legality.

In this case the federal court seems to have enforced the common law as laid down in *Richardson v. Buhl*,¹ above noted, that the purchase by a single corporation of a number of manufacturing plants, so as to obtain a large degree of monopoly in their products, is illegal.

The question whether a single corporation may legally establish a monopoly by the purchase of most or all of the manufacturing plants of a particular sort throughout the several states has, it seems, never been squarely presented to and decided by the Supreme Court of the United States. Several cases, however, seem to indicate the views of the court as to such a monopoly. One of these cases is *Central Transportation Company v. Pullman Palace Car Company*,² decided in 1891 by a unanimous opinion, save that Justice Brown did not sit. This case came up from the United States circuit court for a Pennsylvania district, which obtained jurisdiction because of the diverse citizenship of the parties. The action was brought to recover rent under a lease, by which the Transportation Company, a Pennsylvania corporation, transferred all of its cars, patent rights and contracts to the Pullman Company, an Illinois corporation, for a term of ninety-nine years from February 17, 1870, at an annual rental of \$264,000, and by which it also agreed not to make or hire sleeping cars. The Transportation Company had no power of eminent domain, owned no railway, and enjoyed no public or special franchise save the franchise to be a corporation. Suit was brought against the Pullman Company because it refused to continue the payment of rent under the lease, and the defense was in part that the contract was against public policy. In the course of its opinion denying recovery the Supreme Court said:

¹ 77 Michigan, 632.

² 139 U. S. 24.

There is strong ground, also, for holding that the contract between the parties is void, because in unreasonable restraint of trade, and therefore contrary to public policy. . . . This case strikingly illustrates several of the obvious considerations for holding contracts in restraint of trade to be unreasonable and void, as compactly and forcibly stated by Mr. Justice Morton in the leading case of *Alger v. Thacher*.¹ They tend to deprive the public of the services of men in the employments and capacities in which they are most useful to the community as well as to themselves. They prevent competition and enhance prices. They expose the public to all the evils of monopoly. And this especially is applicable to wealthy companies and large corporations, who have the means, unless restrained by law, to exclude rivalry, monopolize business and engross the market.

Since the Supreme Court held the lease in this case unlawful because of its tendency to monopoly, there is some ground to think that the outright purchase of all the manufacturing plants of a given sort in the several states, by a single corporation, might be held illegal for the same reason. Dicta in the case of *United States v. E. C. Knight Company*² support this view, for the court there said:

Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.

As has been already pointed out, this case merely decided that Congress had not authorized the court to deal with monopoly in the manufacture of commodities. In the course of his notable dissenting opinion in the *Knight* case, Justice Harlan said:

Suppose that a suit were brought in one of the courts of the United States — jurisdiction being based, it may be, alone upon the diverse citizenship of the parties — to enforce the stipulations of a written agreement, which had for its object to acquire the possession of all the sugar refineries in the United States, in order that those engaged in the

¹ 19 Pickering, 51, 54.

² 156 U. S. 1.

combination might obtain the entire control of the business of refining and selling sugar throughout the country, and thereby to increase or diminish prices as the particular interests of the combination might require. I take it that the court, upon recognized principles of law common to the jurisprudence of this country and of Great Britain, would deny the relief asked and dismiss the suit upon the ground that the necessary tendency of such an agreement and combination was to restrain, not simply trade that was completely internal to the state in which the parties resided, but trade and commerce among all the states, and was, therefore, against public policy and illegal.

This quotation makes it sufficiently clear that, in the mind of Justice Harlan, the purchase of most or all of the manufacturing plants of a given sort in the United States, in order to control the prices of their products, by a single corporation would be illegal on common-law principles.

The American people, as represented by their courts, stand apparently at the parting of the ways. On the one hand is a line of judicial decisions running back through five centuries and condemning as illegal every form of combination that produces a monopoly in the necessities of life. On the other hand is a short line of decisions, hardly two decades old, that give much support to the view that any monopoly can find legal support if the combination of natural persons that effects it is carried out with the aid of a corporate charter. The decisions on the one hand leave an open highway for free competition, on the other hand they lead to complete monopoly. Looking back at the dissenting opinion of Justice Harlan in the *Knight* case, his words on this point, in 1895, were almost a description of present conditions, when he said:

We have before us the case of a combination which absolutely controls, or may, at its discretion, control, the price of all refined sugar in this country. Suppose another combination, organized for private gain and to control prices, should obtain possession of all the large flour mills in the United States; another, of all the grain elevators; another, of all the oil territory; another, of all the salt-producing regions; and another, of all the great establishments for slaughtering animals, and the preparation of meats. . . .

Glittering generalities about changed economic conditions will neither explain the existence of such monopolies, justify their operations, nor reveal the true source of their power. Human cupidity changes little through the ages. One Wadington who tried to corner the English hop market a century ago, and was heavily fined by Lord Kenyon for his pains, was actuated by much the same motives as those who now seek monopolies through the aid of corporate charters.

Some say, however, that monopoly in the various lines of manufacture is necessary to national prosperity. This assertion lacks both proof in the present and example in the past. England, the greatest commercial empire of the world, has reached its position through an industrial system of free competition. The factories scattered all over the United States, that are being bought up, and in many cases dismantled or closed by great foreign corporations, have been built under a competitive system during a century of the greatest industrial expansion that the world has ever seen.

Most absurd of all is the argument that the law must support monopoly because obtained by combination of natural persons under a corporate charter, though monopoly obtained in any other way is illegal. Listen to the words of Judge Finch in *People v. North River Sugar Refining Company*,¹ in the opinion by which the charter of that corporation was annulled:

The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a fiction and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is: What, in a given case, has been that collective action and agency? As between the corporation and those with whom it deals, the manner of its exercise usually is material, but as between it and the state, the substantial inquiry is only what that collective action and agency has done, what it has, in fact, accomplished, what is seen to be its effective work, what has been its conduct. It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable, intangible, and almost nebulous fiction of our thought, but to the corporators, the in-

¹ 121 N. Y. 582.

dividuals, the acting and living men, to be used by them, to redound to their benefit, to strengthen their hand, and add energy to their capital. If it is taken away, it is taken from them as individuals and corporations, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct and when they all act, collectively, as an aggregate body, without the least exception and, so acting, reach results and accomplish purposes clearly corporate in their character and affecting the vitality, the independence, the utility, of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient fiction.

Other arguments failing, it is said that the legality of monopoly in the ownership of factories by single corporations must be supported because great investments have been made in them. How made, and by whom? The real investments of material and labor in the construction of the purchased plants were made before the blighting hand of the trusts dismantled their equipments and left many a formerly competing plant idle and useless. In the organization of one of these monopolistic corporations capital stock to an amount several times as great as the first cost of the purchased plants is issued, and then the corporation is bonded for an amount fully equal to this cost, and all the plant is mortgaged to secure these bonds and make them salable. Meantime the capital stock of the corporation, representing usually no investment whatever above the amount covered by the bonds and mortgage, has been in large part turned over to the promoters of the corporation as their profit in the enterprise. If this means a few persons hold a majority of the capital stock and control a corporation whose property has been furnished or paid for by the bondholders. The so-called investment that the law is called upon to protect is thus the assumed right of a few so-called "insiders" to manage or mismanage property for which they have never paid, and which they do not in either law or equity own. In other words, the promoters of the trust have capitalized the assumed right to burden the public with monopoly prices and now claim a vested interest in the destruction of competition.

Take the strongest possible case in favor of the legality of the

trust, where some innocent purchaser has paid value for stock in a corporation whose entire assets will hardly satisfy its bonded debt. Is the public in this case to be permanently burdened with monopoly prices because some ill-advised person has been swindled by the purchase of stock from a promoter? But it is said, let the legislature and the courts see to it that no more than a reasonable price is charged for the commodity produced by the monopolized plants. Assuming that this can be done, how is the holder of stock that represents no actual investment to be benefited? In the language of Justice Harlan, when defining the rights of a public service company: "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."¹ This "fair return" will, perhaps, pay the interest on the bonds of the corporation, though some of the plants which these bonds were used to purchase are idle and dismantled; but how can it yield anything for the stock that represents no investment in these plants?

In truth, however, the argument that corporate monopolies should be upheld because those interested will otherwise be injured is unsound at its very root. On what theory of jurisprudence is the law against combinations to be defeated because its enforcement will injure those who have broken it? According to this theory the pool, the trust agreement and the stockholding corporation should all have been supported by the courts, lest some person who had thus broken the law should suffer. But on this point the courts have thought otherwise.

As has been shown above, the main support for the legality of monopolistic combinations under corporate charters is found in an opinion of doubtful authority by the New Jersey court. In this case the court put its decision distinctly on the ground that the domestic corporation involved was authorized by the New Jersey legislature to do what had been done under its charter, and that the New Jersey court was bound by the legislative will. Moreover, the court in this case denied that any monopoly, virtual or complete, had been created. This goes far to reduce the language of this court as to the legality of such monopolies

¹ 169 U. S. 466.

to mere dicta. Obviously the courts of other states are not bound to respect the powers conferred on foreign corporations by the states which have created them. Neither are the decisions of a court under a local statute of any necessary weight in other states where no such statute exists. If New Jersey likes monopoly, let the legislature and courts there foster it within their jurisdiction, but other states are under no obligation to bow to its legislative and judicial decrees.

Questions involving the legality of corporate combinations for monopoly purposes are pressing upon the courts in many states. The choice between competition and monopoly in industrial affairs must soon be definitely and perhaps definitively made. No doubt can be entertained as to the desire of the great mass of the people that competition be maintained. If monopoly is permanently established, an effort will be made to escape its prices, either along the rough road of profit regulation, or by excursions into the fields of public ownership.

It is hardly to be assumed that the law of five centuries against monopolistic combinations of all sorts is to be overturned by a decade of corporate license. If legislators truly represent their constituents, the licenses of corporations to monopolize forests, mines and factories will be withdrawn. Unless judges forsake the wholesome principles of the common law, monopolistic combinations of natural persons under corporate charters will not be upheld. If, however, corporate monopoly does ultimately triumph over competition, its power will not be due to improved processes of manufacture, to the supposed economies of the concentrated management of scattered factories, nor even to the advantages of production on a great scale. On the contrary, its power will be derived from roving charters to purchase competing plants, granted by the legislatures of some states and sanctioned by the courts of all the others. This triumph of monopoly can come only after private greed has darkened the ancient lights of the common law.

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TRUSTS AND TRADE UNIONS

AND THEIR MUTUAL RELATIONS.

THE most marked feature of present economic conditions is the division of the industrial world into two opposed camps, that of employers and that of workmen. Although the ultimate interests of labor and of capital may be identical, their immediate interests are antagonistic, as must inevitably be the case with buyers and sellers of the same commodity. Workmen have accordingly found it advisable to form associations which, through specially appointed officers, deal with the employers on fairly equal terms. It was the development of these combinations of workmen that aroused the greatest interest in students of industrial conditions and tendencies fifteen or twenty years ago; but at present the attention of economists is more strongly attracted by combinations of capitalists, or trusts. The purpose of these more recent combinations is not primarily to reduce the workers' remuneration but to secure greater economy in production and, in some cases, higher prices for their products. These two movements dominate the world of industry. They are frequently compared with one another: a union, it is asserted and denied, is a labor trust; a trust, an employers' union. But hitherto little serious attention has been given to the relations between the trusts and the unions.

As, in the popular mind, the capitalist and the workman are always striving to thwart each other, it was at first believed that, since the trust was a capitalists' organization, the working classes and their spokesmen, the trade unionists, must necessarily oppose it; and there was special ground for this belief in the early phases of the trust movement, when the dismantling of the less well-equipped establishments deprived many work people of employment. In fact, many trade unionists, retaining for some time their attitude of antagonism towards any action of the employers, did oppose the employers' latest step, the formation of trusts. The Knights of Labor, for example, took up an attitude of hos-

tility.¹ So also did the Tobacco Workers' International Union, which stated, as the fourth of the objects for which it was organized: "To fight the trust and all trust-made tobacco."² In many cases the trusts assumed an equally hostile attitude toward trade unions. In the original deed of the sugar trust, there is mentioned, as the third of its objects: "To furnish protection against unlawful combinations of labor."³

With the progress of time, however, it has been found that the displacement of workmen by the trusts has gradually ceased; and the attitude of the trade unions has become less hostile. In the conference on trusts held at Chicago, in 1899, those most favorable to the new development (next to the spokesmen of the trusts) were the theoretical economists and certain of the representatives of organized labor. The prevalent attitude of the latter may be illustrated by the following extracts from a speech by Mr. Henry White, the general secretary of the United Garment Workers of America:

In America competition has reached a pitch of intensity unknown anywhere else. . . . Instances can be cited where production has been carried on in some large industries at practically no profit, simply with the hope that conditions would improve and because of the inability to withdraw invested capital. Against such destructive warfare combination has come as a relief. . . . In the clothing trades free competition of a certain kind has reached its last ditch and any change would be gladly welcomed as a relief.⁴

Mr. Samuel Gompers, president of the American Federation of Labor, spoke of the "legitimate development and natural concentration of industry."⁵

On the other hand some of the trusts have deliberately favored union labor, while others have retained their old attitude of an-

¹ Industrial Commission, vol. 7, p. 441; and *The Trust, Its Book* (Bridge, Editor), p. 204.

² Industrial Commission, vol. 17, p. 332.

³ Lexow Trust Commission, 1897, p. 169.

⁴ Chicago Conference on Trusts, pp. 324, 325.

⁵ *Ibid.*, p. 330.

tagonism. This makes it difficult to draw any definite conclusion concerning the relations of trade unions and trusts. The final report of the Industrial Commission shows that its members can find no clue to guide them in the matter, for this report declares:

It is impossible to make any statement that will be of universal application regarding the attitude of combinations towards trade unions. In most cases the position taken seems chiefly a matter of personal preference, or it may have been brought to the combination by the experience of some of the establishments which form it.¹

The object of the present paper is to set forth certain facts which may throw light on this complex situation, and which perhaps warrant more definite conclusions concerning the mutual relations of trusts and trade unions.

I.

It is often assumed that the growth of trusts has stimulated the growth of trade unions; but inquiry will show that it is hardly possible to point to a single instance where the rise of the trust has been followed by a combination of the workmen employed in the industry affected. As will be noted later, an existing trade union has sometimes been enabled to strengthen itself through an alliance with a trust, but the writer is unaware of a single case where a combination of capital has provoked permanent and successful union among the work people.² The reverse order of events, however, is not uncommon. The introduction of large-scale production indeed tends to the growth of trade unions, for in their absence the single workman is at a serious strategic disadvantage in bargaining with the employer; but when the union has been formed the strategic disadvantage is transferred to the employer. He is faced by a compact body of trade unionists

¹ Industrial Commission, vol. 19, p. 622.

² Possibly the Tobacco Workers' International Union is an exception, but even it is by no means to be described as successful, as it includes only five or six per cent of the workers. *Ibid.*, vol. 7, p. 192 of digest.

who assert that other establishments in the trade are giving higher wages or better conditions than his factory, and that he must bring his establishment into line. The possibility of being forced into this position is of course the reason why the employer, while often willing to treat with a committee of his own workmen, usually refuses to negotiate with the officers of their national or international union. He realizes that if once he meets the officials of an organization which has branches throughout the whole country, which has command of information concerning the conditions of trade and labor in every centre of industry, and which is sufficiently well disciplined to act in concert in obedience to any line of policy that may be agreed upon, then he, and not the workmen, will be the weaker party in the driving of a bargain. The employers therefore federate in their turn; and thus, in the end, are brought face to face the consolidated forces of labor and of capital, organized on each side and meeting at regular intervals to draw up agreements regulating wages, hours and conditions of work. This system is now very generally adopted in the staple industries of Great Britain.¹ In America the system of collective bargaining and of annual agreements regulating the whole of the relations between employers and work people in a particular trade is less widespread, but it is growing in favor. Already in the bituminous coal regions,² formerly in the anthracite districts,³ to some extent in the iron, steel and tin industries,⁴ in the stove-foundry trade (one of the most effective systems),⁵ and in the glass trades,⁶ wages are fixed by joint boards representing the majority of workers and employers in the industries affected. In precisely the trades mentioned above there now exist or have existed trusts, *e.g.* the Pittsburg Coal Company,⁷ the combination of anthracite operators, the United States Steel Corporation with its subordinate companies, the window-glass and flint-glass trusts. Even more direct evidence than this mere coincidence can be adduced. Mr. Roberts, in his recent book on the anthracite coal industry, points

¹ Webbs, *Industrial Democracy*.

² *Industrial Commission*, vol. 17, p. 326.

³ *Ibid.*, vol. 17, p. 327.

⁴ *Ibid.*, vol. 17, p. 339.

⁵ *Ibid.*, vol. 17, p. 347.

⁶ *Ibid.*, vol. 17, p. 361.

⁷ This combine was not, however, successful in establishing the monopolistic power it had hoped for.

out how the rise of the trade unions stimulates combination among the capitalists.¹ And in the stove foundry trade there exists, alongside of the organization dealing with relations with employees, another association dealing altogether with the commercial side of the business, and to a large extent officered by the same men.²

While these facts are by no means conclusive, there seems at least to be more reason for holding that trade unions have fostered the growth of trusts than that trusts have fostered trade unions. But the existence of trade unions is, of course, only a contributory or minor cause in the development of the trusts.

II.

If it be granted that trusts do not as a general rule cause the growth of trade unions, there still remains the question as to their effect on the workmen's organizations and on the position of the employees generally. It is perfectly evident that the Lexow Trust Commission of 1897 believed that the trusts were a dangerous menace to the workingman. In its report is to be found the following passage:

Another advantage is alleged to be that of better wages and more constant employment. We are unable to reach this conclusion. No part of the profit arising from admitted economies and resulting in large dividends on inflated stocks has reached labor in the form of higher wages, while the claim of constancy of employment is negated by the fact that factories in operation for a generation have been closed and that workingmen, more or less continually employed for years in a factory independently operated, have been discharged on its absorption by the combination.³

This passage was written in 1897. Three years later the situation was so far changed that we find the glass trust (The National Glass Company) deliberately unionizing all the establishments

¹ *The Anthracite Coal Industry*, pp. 69, 70, 78.

² *Industrial Commission*, vol. 7, pp. 860, 867.

³ *Investigation of Trusts*, N.Y. Senate Documents, 1897, no. 40, p. 17.

under its control,¹ and Mr. Schaffer, the president of the Amalgamated Association of Iron, Steel and Tin Workers, expressing an opinion decidedly favorable to trusts.² It appears, then, that caution is necessary in drawing conclusions from the conditions obtaining at any given moment. Caution is further required because of the difficulty of obtaining exact information.³

With these warnings to the reader, the writer takes up, first, the cases where a noticeable friendliness prevails between the two organizations.

The case of the flint-glass trust, referred to above, is one of the most remarkable. The story of its formation, as told in the report of the Industrial Commission, presents many of the familiar features of reckless over-production, fierce competition and absence of profits or even positive loss on the capital invested.⁴ In 1899 the question of a combination was discussed and arrangements were made for the merging of nineteen concerns into a single corporation to be entitled the National Glass Company. Its method of organization differed in several respects from that of most trusts; it seems indeed to be nearer akin to a German cartell than to an orthodox American combine,⁵ and it was not formed by a promoter, but by a committee of manufacturers. There was no over-capitalization, and no complete centralization of management.⁶ But for our present purpose the most interesting point about the flint-glass trust is its attitude toward that

¹ Industrial Commission, vol. 7, p. 831.

² *Ibid.*, vol. 7, p. 395.

³ The facts set forth in this paper are derived mainly from the evidence taken before the Industrial Commission, but that body did not direct any special attention to this matter, and not infrequently the evidence of the witnesses stops precisely at the point where for our purpose further light is most needed. A theoretical economist who is not in direct and immediate touch with the business world may easily be misled by such partial and incomplete information as can be gathered from government reports, commercial and trade-union journals, and occasional conversations with business men.

⁴ Industrial Commission, vol. 7, pp. 896 *et seq.*

⁵ For a discussion of the differences between trusts and cartells, see Aschrott, *Die amerikanischen Trusts* (Tübingen, 1889); de Rousiers, *Les Syndicats industriels de producteurs* (Paris, 1901), p. 119; Grunzell, *Über Kartelle* (Leipzig, 1902).

⁶ Industrial Commission, vol. 7, p. 829.

union whose members it employs — the American Flint Glass Workers' Union. When the combination was in process of formation, the leaders of the men came to the organizers and pointed out that, of the nineteen concerns which were to be absorbed, twelve were union and seven non-union; that the rules of the Flint Glass Workers' Union did not permit the same company to employ both union and non-union men; and that refusal to recognize the union in any of the plants owned by the combine would lead to a strike.¹ The labor employed in this industry is highly skilled, and the union, which was founded as far back as 1878, numbers about 10,000 members and includes about eighty-five per cent of the men in the trade.² If the threatened strike had been declared, non-union men could not possibly have been secured in sufficient numbers to carry on the business successfully, independent competition would have arisen, and the trust would have collapsed. The directors decided to take the course of recognizing and treating with the union, though it is evident that some of them adopted this plan with great reluctance.³ One witness, however, suggests a further and interesting reason for the willingness of the majority to treat with the union — a willingness that is noticeable in every branch of the glass trade, save in the manufacture of plate glass. It is asserted by Mr. Hammett, formerly treasurer of the Window Glass Cutters' League, that the reason is to be found in the very high proportion which the cost of labor bears to that of the other factors of production in the glass industry.⁴ Competent witnesses say that it amounts to seventy-five per cent of the total cost in the window-glass trade, and sixty per cent in the flint-glass trade.⁵ Now an association of manufacturers is greatly helped, both in discovering a basis for prices and in maintaining the level of prices, if it is assisted by the union in maintaining a common level of wages. "Organized labor," says Mr. Hammett, "puts them all upon the same footing as to the question of wages to go into the market."⁶ In another branch of the trade, glass-bottle blowing, the same

¹ *Ibid.*, vol. 7, p. 831.

² *Ibid.*, vol. 15, p. 425.

³ *Ibid.*, vol. 7, p. 898.

⁴ *Ibid.*, vol. 7, p. 927.

⁵ *Ibid.*, vol. 7, p. 838.

⁶ *Ibid.*, vol. 7, p. 827.

set of circumstances appears even more clearly, although at the time when the evidence was taken a trust had not been formed.¹

The immediate effect of the formation of the flint-glass trust was an advance in prices. Common tumblers which had been ten cents a dozen were raised to sixteen cents; blown tumblers rose from twenty cents to twenty-five cents.² The trust managers, however, asserted that the increase was no more than was necessary in order to secure a fair margin, and that there were no special complaints from those who handled the trust's goods by reason of the advance in prices.³ Wages were increased five per cent,⁴ according to one witness; another witness, who had operated a non-union factory prior to the combination, said that the rise was twenty-five per cent,⁵ and hours of labor were decreased. At the same time the stockholders received a dividend of ten per cent.⁶

In the window-glass trade a somewhat similar situation existed. The trade union had at one time absolute control: every workman in every window-glass factory was a union man. The union made rules concerning the admission of apprentices and enforced a very short working week — forty hours.⁷ There were some internal dissensions among different branches of the workers prior to 1900. Complete amalgamation was secured for a time, but a fresh rupture occurred subsequent to the formation of the trust. In this case also it was stated that many manufacturers were favorable to the union and to the system of yearly wage agreements, because of the consequent enforcement of a uniformity of wages which minimized competition.⁸

Since its formation the trust has maintained special agreements with the work people under which the factories are closed for five or six months every year, in order to keep up the level of prices.⁹ The trade union operates some coöperative factories, which have also an agreement with the trust to close down annually for sev-

¹ See an interesting dialogue, too long for quotation, on p. 108 of vol. 7 of the Industrial Commission's Report.

² *Ibid.*, vol. 7, p. 897.

³ *Ibid.*, vol. 7, p. 839.

⁴ *Ibid.*, vol. 7, p. 834.

⁵ *Ibid.*, vol. 7, p. 897.

⁶ *Ibid.*, vol. 7, p. 897.

⁷ *Ibid.*, vol. 7, p. 44.

⁸ *Ibid.*, vol. 7, p. 46.

⁹ *Ibid.*, vol. 13, p. 579.

eral months.¹ And in this one case the trust has taken a further step in its relations with the trade union. It not merely recognizes the union and shares with it some part of its monopolistic gains; it also endeavors to make a bargain that the supply of labor shall be cut off from the independent producers,² following in this respect the plan for coöperation of capital and labor so loudly advocated by Mr. E. J. Smith,³ and adopted in the Birmingham Bedstead Alliances (now dissolved). In an address by the president of the union, there occurs the following passage:

Heretofore we have stipulated that manufacturers signing our scale are not permitted to employ any men who do not belong to our organization. This year we will agree not to furnish a scale to any concern⁴ that does not belong to the manufacturers' organization. The manufacturers are justified in making this request as they have acceded to our demands in this regard for years.⁵

The trust also used the power of the trade union to compel the independent manufacturers to restrict production by agreeing to a long shut-down in the summer. An increase of ten per cent in wages was promised,

provided the large majority of the factories, coöperative and independent, close down this month when the American⁶ factories stop, and next fire⁷ the great majority must start and stop at the same time as the American factories.⁸

Soon after its formation, the combine also set aside in trust for the union a block of stock, and actually admitted the president to the board of directors, on condition that the union should always keep its factories manned.⁹ While never openly proclaimed, it

¹ *Ibid.*, vol. 13, p. 566.

² *Ibid.*, vol. 17, p. 364.

³ See E. J. Smith, *The New Trades Combination Movement* (London, Rivingtons, 1899).

⁴ Nor, in consequence, to permit unionists to work for that concern.

⁵ *National Glass Budget* (Pittsburg), Aug. 2, 1902.

⁶ *I.e.* the factories of the American Window Glass Company — the trust.

⁷ *I.e.* period of work when the fires are in constant operation.

⁸ *Commoner and Glass Worker* (Pittsburg), May 10, 1902.

⁹ *Ibid.*, Jan. 17, 1903.

was commonly understood that the union was not merely to supply all the labor needed by the trust, but to restrict the number of workmen available for the independents. The union, however, was unable, owing to strife in its own ranks, to fulfil its obligations, and the stock was forfeited. But it is easy to see how such a treaty with a union of skilled and highly organized workmen might make the trust practically impregnable as possessor of a monopoly of both instruments of production and skilled men.

In the glass-bottle industry a trust has not yet been formed, and it is freely admitted that a successful combination can come about only by the coöperation of both workmen and capitalists. At a meeting of the manufacturers

it was decided to ask the help of the workers in bringing about better conditions in that branch of the industry by agreeing to delay the start of the factories next fall. . . . The only way successful curtailment of production can be brought about was decided to be with the coöperation of the organized workers.¹

The workers on their side are far from being averse to such co-operation. A trade unionist writes in the trade journal:

As the manufacturers themselves practically admitted their inability to effect an organization by their failure to do so, I would suggest that the G. B. B. A.² help them out. I would have the manufacturers' organization meet prior to the conference of the two wage committees next summer and adopt a minimum selling list, and at the conference have this list presented. This list, after its adoption by the conference, to be printed side by side with the blowing list³ and our factory committee to present the same to each firm in the business, and we then protect the selling list in precisely the same manner as we do the blowing list, namely, at the first evidence of cutting prices the members of our organization to withdraw from such factory.⁴

It appears that these proposals have not yet been put into operation; the simple fact, however, that they have been put forth by

¹ *Commoner and Glass Worker*, April 10, 1902.

² Glass Bottle Blowers' Association.

³ Giving workers' wages on piece-work scale.

⁴ *Commoner and Glass Worker*, Jan. 25, 1902.

both sides to the bargain is sufficient to show the probable trend of events.

The now defunct National Wall Paper Company was formed in 1892, not through the agency of a promoter but by the efforts of the individual manufacturers, and it was not over-capitalized. It has been for many years the custom to shut down factories for several months in each year, and in 1894 the factories were closed for a longer period than usual. The lack of work caused dissatisfaction among the employees; and the two unions of skilled work people interviewed the managers,

and before they would go ahead for the next year's work they made a demand that we give them eleven months' continuous employment, and to that demand we acceded. . . . And it would have embarrassed us very much not to have granted their demands, situated as we were.¹

The dissatisfied employees, who were highly skilled,² succeeded in obtaining a very considerable rise of wages in addition to the longer period of employment.³ They found that the existence of a trust was of great assistance to labor in enforcing its demands. "It is much easier," Mr. Burn testified, "to replace the amount of skilled labor required for one factory than it is for twenty factories."⁴ But it never occurred to the National Wall Paper Company to follow the plan advocated by Mr. E. J. Smith and adopted by the Birmingham Bedstead Alliances and by the window-glass trust, *i.e.* to make use of this scarcity of skilled labor to embarrass its competitors, by bargaining with the union that in return for the privileges granted by the trust it should not permit its members to enter the employment of independent firms.⁵

Turning now to the iron, steel and tin industries we find it a little difficult to distinguish the various threads of development, because the different trusts have adopted dissimilar policies. One or two interesting facts, however, may be set forth. The two par-

¹ Industrial Commission, vol. 13, p. 293.

² Lexow Trust Commission, p. 688. Industrial Commission, vol. 13, p. 293.

³ *Ibid.*, vol. 13, p. 293.

⁴ *Ibid.*, vol. 13, p. 293.

⁵ Lexow Trust Commission, p. 699.

allel tendencies, towards unionism among the workers and combination among the capitalists, appear in the iron and steel industries; and here first, in the United States, were wages and conditions of employment determined by annual joint agreements.¹ In the different branches of this industry the percentage of organized men varies to a considerable extent. About two-thirds of the entire puddling industry is organized. Among iron and steel workers, the proportion is only one-half. In the sheet-iron branch it is higher, eighty-five to ninety per cent. Among the tin-plate workers about ninety-five per cent are organized in two unions.² As the tin workers are so highly organized, it is not surprising that the trust preferred to recognize them rather than risk a strike. It not only continued to treat with the union in those plants where unionism was established prior to the formation of the trust, but it further permitted several non-union establishments to be drawn into the organization.³ When the trust was organized, the tin workers received an advance in wages of fifteen per cent, and in those mills which had previously been non-union, the advance was as much as thirty-two per cent.⁴ Wages are based on a sliding scale with a fixed minimum, and thus the workers share in the high prices received by the trust. "They are the best paid men in the country," said one witness; "they are getting their full share."⁵

In the other branches of the iron and steel industry unionism is not so strong; and this fact is reflected in the dealings of the various iron and steel combinations with the Amalgamated Association of Iron, Steel and Tin Workers. The Carnegie Company, it is well known, refused to deal with the unions after the disastrous Homestead strike of 1892. In fact, when it became known that some of the employees of the company had formed a lodge of the Amalgamated Association, the offenders were promptly discharged.⁶ The National Steel Company and the American Steel Hoop Company both recognize the Amalgamated Association and, by means of conferences, establish each year a fixed

¹ Industrial Commission, vol. 17, p. 339.

² *Ibid.*, vol. 1, p. 928.

³ *Ibid.*, vol. 1, p. 869.

⁴ *Ibid.*, vol. 7, pp. 85, 383.

⁵ *Ibid.*, vol. 7, p. 383.

⁶ *Ibid.*, vol. 7, p. 385.

rate of wages, based on a sliding scale. Only about half their workers are organized, but the one scale governs the wages of all.¹ The Federal Steel Company also settles wages by conferences between men and managers, but the Amalgamated Association was recognized and its scale signed only in some of the mills forming the combination.²

The American Steel and Wire Company on the other hand, though it has never been asked to recognize the union, states through its president that, if such a request were made, it would certainly be refused. But wages are fixed by conference with mill committees and are usually similar to the union scale. Apparently the men recognized that in this case more was to be gained by not pressing the question of the recognition of the union; but there seems good ground for believing that the mill committees consisted largely of union men and acted more or less under the direction of the union officials.³

It is interesting to observe that the unionists thoroughly approved of the movement towards consolidation. Mr. Schaffer, president of the Amalgamated Association of Iron, Steel and Tin Workers, when asked what was his opinion of trusts and concentration of capital, replied that so far the effect had been beneficial and that he believed the generality of the members of the association would "prefer to have these larger corporations, syndicates, trusts or combinations than deal with the smaller mills."⁴

Apparently the system of "exclusive agreements," or refusal of the union to work for any employer not in the masters' association, was just beginning to evolve. Mr. Schaffer testified:

We have a very complete system. . . . We have been fixing the rates up, and we have had the coöperation on the part of the manufacturers. All that is necessary to make harmonious relations.

Q. Do they act in good faith? *A.* Oh yes, splendid gentlemen. Our whole difficulty comes from some one who will not go in on that. In fairness to the other employers we must compel him to make the same price or withhold our labor from him.

Q. Have the manufacturers any way of compelling some one man-

¹ *Ibid.*, vol. 1, pp. 946, 948, 955.

² *Ibid.*, vol. 1, p. 1012.

³ *Ibid.*, vol. 1, p. 983.

⁴ *Ibid.*, vol. 7, pp. 395-96.

ufacturer to give in? A. Only by withholding our work from him; keeping the skilled workmen away from him. . . . We do that ourselves. We think it only fair to do that with them; to protect them all we can.¹

We are now in a position to understand the situation when the United States Steel Corporation was formed. The union of the skilled workers of the combine was at that time all but supreme among the tin workers, and commanded the allegiance of about half the labor in iron and steel. Many of the constituent corporations making up the great trust had recognized the union; others, however, had refused to treat with it. The union leaders believed that, exactly as the tin workers and the glass workers had used the capitalists' organization to strengthen their own position, so they, by refusing to work for any mill in the combination unless all were unionized, could so embarrass the newly-formed trust that their demands would be readily granted and the union would become straightway supreme throughout the whole body of workers. It was, as is pointed out by Carroll D. Wright, essentially a fight for recognition, not for increase of wages or betterment of conditions.² But the leaders miscalculated their strength. They controlled only a bare majority of the labor and were dealing with energetic men, some of whom were vigorously opposed to trade unionism. The strike ended practically with a restoration of the *status quo*; but some plants which had been union were henceforth to be non-union. To-day in some concerns of the steel trust unionism prevails; in others it remains absent.

In the bituminous coal field there are evidences of harmony and coöperation between the trade unions and the combinations of capitalists, although up to the present none of the latter has reached the dimensions of a trust. The formation of the Pittsburgh Coal Company, embracing 140 properties, was welcomed by the employees, and relations between the combination and the trade union were entirely harmonious.³ For this fact there was one very obvious reason. Wages were paid, as in many branches

¹ Industrial Commission, vol. 7, p. 96.

² *Quarterly Journal of Economics*, vol. 16, p. 62.

³ Industrial Commission, vol. 13, p. 101.

of the iron and steel trade, on a sliding scale based on the price of coal and with a fixed minimum.¹ The combine hoped to establish a monopoly and raise prices. The workmen evidently welcomed such a course, as it would lead to a rise in their own wages. On the other hand, many of the employers are friendly towards the union, because the existence of a steady level of wages eases the force of competition, which, owing to the large and scattered deposits of bituminous coal, is especially strong in the mining of that commodity. One employer says:

The only fault I have to find with the labor organization is that they are not able to regulate matters so that the entire thing would be uniform. . . . The only drawback is that they are not strong enough.²

In the railway world competition is not yet eliminated; there no trust of the industrial type exists. But it may perhaps be worth while to inquire into the attitude of the trade unions — the railway brotherhoods — towards pooling and consolidation. It will be found that they unanimously object to rate wars. In the document drawn up for the Industrial Commission by the chiefs of the five railway brotherhoods or orders, *i.e.* engineers, firemen, conductors, trainmen and telegraphers, we find passages emphatically condemning cut-throat competition between railroads:

If the practice of accepting business at a loss is continued, after all other economies have been inaugurated the wages of the employees will naturally become the object of consideration or attack. . . . We have been of the opinion that the government should be very careful in exercising or extending its right of control of the railways, but if the railway officers themselves cannot or will not prevent such ruinous and disastrous wars under the guise of competition, the government should assume the rôle of guardian for them and in the interests of the shippers, the dealers, the travelling public and the railway employees, take such steps as may be necessary to establish and enforce a minimum scale of rates or in some other way to effectually stop these insane departures from business principles which seem to be becoming somewhat periodical in their recurrence.³

¹ *Ibid.*, vol. 13, p. 101.

² *Ibid.*, vol. 12, p. 75, and also p. 29.

³ *Ibid.*, vol. 4, p. 69; *cf.* also vol. 9, p. 71.

And the president of the New York Central Railroad says that the employees are gradually coming round to the view that unrestrained competition is bad for themselves as well as for their employers "and are rather inclined to help the railroad in averting injurious legislation."¹

The brotherhoods appear, on the whole, to approve of consolidation, because by its means the advantages gained by their organizations on strong lines are extended to weak local roads. The same views with regard to rate wars and consolidation are held by the other unions of railroad employees which do not rank with the five brotherhoods.²

While the employees are coming to favor the policy of the railroads with regard to consolidation, the companies on their side regard the brotherhoods, as a general rule, with approval and willingly treat with them concerning wages and conditions of work. The president of the "Big Four" says emphatically, "We have got along better since we had organizations than we did before."³

In the case of one other trust we find a noteworthy degree of cordiality to the trade union. The president of the former asphalt trust states:

I believe that union is better for business men, for laboring men and for all. Almost all our work is done by union labor. Coöperation conserves force, and is advantageous to society, though the power of consolidation may be abused either by the workingmen or by the employers. Our relations with labor organizations are very friendly.⁴

III.

There are industries, however, in which the trust and trade union display no such friendly feeling towards one another. The following trusts state that they do not recognize union labor: the biscuit trust, the⁵ General Chemical Company,⁶ the cordage trust,⁷

¹ Industrial Commission, vol. 4, p. 70.

² *Ibid.*, vol. 4, p. 256.

³ *Ibid.*, vol. 4, p. 291.

⁴ *Ibid.*, vol. 13, p. 679.

⁵ *Ibid.*, vol. 13, p. 720.

⁶ *Ibid.*, vol. 13, p. 675.

⁷ *Ibid.*, vol. 13, p. 140.

the rubber trust,¹ the Pressed Steel Car Company,² the whiskey trust,³ the salt trust.⁴

Concerning the sugar trust we learn that the laborers whom it employs are almost exclusively unskilled and belong to the lowest rank of foreign immigrants — Poles and Bohemians. They are not in any union.⁵ Evidence of a somewhat similar nature is given with regard to the Standard Oil Company. To one witness the question was put: "Do the Standard Oil Company and the independent producers look with favor upon labor organizations?" He answered:

So far as I am informed on the subject, I believe they do, although so far as labor organizations apply to the oil industry we have very little of it. It is a matter of individual contract and the wage is dependent on the skill of the operator. For that reason we have very little of the union of labor there.

Both the sugar trust and oil trust insist, however, that they pay good wages and treat their men well, and one of the Standard Oil magnates states that he believes in the right, and indeed the duty, of labor to organize.⁷ But in view of the general unorganized condition of the oil workers, and the fact that this witness denounces demagogic labor leaders, we are perhaps justified in regarding his expression of belief in unions as a pious opinion of little practical importance.

At one time, however, the oil trust formed a temporary alliance with a trade union. In the year 1887 the trust and the association of producers of raw oil arranged for a "shut-in" to relieve the glut in the market and put a stop to falling prices; and for once thought was taken of the workers who would be thrown out of employment by the limitation of production. 2,000,000 barrels were set aside to compensate the workingmen. They received one dollar a day, distributed through their organization,

¹ *Ibid.*, vol. 13, p. 85.

² *Ibid.*, vol. 13, p. 721.

³ *Ibid.*, vol. 13, p. 256.

⁴ *Ibid.*, vol. 1, p. 189.

⁵ *Ibid.*, vol. 1, pp. 128-29. These facts seem to suggest that the clause stating that opposition to illegal combinations of work people was one of the objects of the trust was merely a blind. See above, p. 194.

⁶ Industrial Commission, vol. 1, p. 483.

⁷ *Ibid.*, vol. 1, p. 542.

the Well Drillers' Union. The reason for this unusual generosity was that "the drillers could have made a failure for the producers, had they been so determined. Enough of them could have got together to start drilling on their own account."¹ The workmen not merely secured compensation for the period of the "shut-in," but also obtained a raise of wages, when work was resumed.

In the case of the cotton-thread trust little information concerning the position of the employees is available. But we learn that the large textile businesses in Massachusetts commonly refuse to recognize the labor unions,² which save in a few highly skilled trades "are very weak."³

The few ascertainable facts about the situation in the bicycle trade are not without interest. In the list of general aims given in the preamble to the constitution of the International Association of Allied Metal Mechanics, this union declares its

opposition to trusts and combinations of capital, which act not alone to curtail competition and limit production, but are used as weapons to crush and degrade the wage-worker. Such trusts are fast reducing the wage-worker to a degree of slavery without parallel in the world's history.⁴

These words are more fiery than the circumstances of the case seem to warrant. The American Bicycle Company assumed towards organized labor an attitude similar to that adopted by many of the steel combinations. It permitted the managers of individual factories to make what arrangements they pleased with the union. In one or two plants union labor is used; in others it is not.⁵

There are a few trusts which display not merely indifference but hostility to organized labor. The Glucose Sugar Refining Company employs no union labor. As a general rule its men have not wished to belong to unions, and no unions have been organized among them — probably because they were unskilled. Unions were formed among the machinists and firemen, and in

¹ Industrial Commission, vol. 1, p. 431, *cf.* also p. 483.

² *Ibid.*, vol. 7, pp. 913, 915.

³ *Ibid.*, vol. 17, p. 419; *cf.* vol. 15, p. 445.

⁴ *Ibid.*, vol. 17, p. 231.

⁵ *Ibid.*, vol. 8, p. 131, 32.

some cases strikes resulted on grounds which the company considered frivolous or unjustifiable. Owing to the difficulty the company has had with these few union men, it does not favor trade unions in its business and it has never at any time dealt with the unions as such.¹ The watch-case trust has apparently shown itself hostile to organization among its workers.² The biscuit trust (The National Biscuit Company) states that it has never had any trouble with labor unions or other labor organizations;³ but its products are on the "We don't patronize" list of the American Federation of Labor⁴ — a fact which seems to indicate that it is considered an unfair employer by the general body of unions.

But of all the conflicts between trusts and trade unions, the most notorious is that between the tobacco trust and the Tobacco Workers' International Union. The president of the trust — *i.e.* of the two affiliated companies, the Continental and the American — states that, while he has no objection to the organization of the laborers employed by his companies, the companies take no account of the unions. "We were not going to ask our employees to join a church or a union." This passive attitude looks a little more threatening when Mr. Duke gives a further explanation of his views:

We do not propose to have them organize and inaugurate and lay down rules by which we are to govern our factory.

Q. Suppose they simply have rules to run their own affairs? A. That is all right.

But when one of the commission quietly suggested that rates of wages and hours of work are, after all, what workmen usually organize to fight for, and that these questions are obviously "their own affairs," Mr. Duke was clearly a little confused at the, to him, apparently novel idea.

Q. Do you not think that the 30,000 men in your employ have as much right to say what the wages and hours of work shall be in that trade as you have? A. Why, sure. We do not deny them that right.

¹ *Ibid.*, vol. 13, p. 718.

² *Ibid.*, vol. 17, p. 297.

³ *Ibid.*, vol. 13, p. 720.

⁴ *Federationist*, February, 1903.

Q. Is not that practically all they organize for? A. I do not know what they organize for; they have not bothered us about organizing.¹

The leaders of the trade union, on the other hand, state definitely that the hostility of the trust is the main reason for the weakness of their organization.² This trust turns a union into a non-union factory. It refuses to have dealings with a "walking delegate." It considers a trade union an "outside influence," rightly placed as far aloof as a church or a political organization.

IV.

From this recapitulation of the scattered and incomplete references to the relations between labor unions and combinations of capitalists contained in the report of the Industrial Commission, it is apparent that these relations are quite dissimilar in the various industries. The question then presents itself: Can we find any differences in these various branches of manufacturing which will explain the different attitudes of the employers? In the first place, it should be observed that the strength of the trade union is the most important factor in the situation. The glass workers' unions are exceedingly strong, controlling a very large proportion of the men employed in the industry.³ So also are the tin-plate workers, and the bituminous miners, while on the other hand there appear to be no unions at all among sugar refiners, oil refiners, chemical workers and the employees of whiskey distillers. The textile unions are very weak;⁴ so also are the unions among tobacco workers.⁵ We must then ask what determines the relative strength or weakness of the union. There is commonly one all-important factor, the skill of the workers. The glass workers are highly skilled, also the tin-plate workers, the railroad men, and employees of the wall-paper manufacturers. And in fact a little consideration will show that a strong union of unskilled labor is almost impossible. Organization can be built up only on the

¹ Industrial Commission, vol. 13, p. 325.

² *Ibid.*, vol. 7, p. 405.

³ *Ibid.*, vol. 7, p. 44; vol. 17, p. 172. ⁴ *Ibid.*, vol. 17, p. 419. ⁵ *Ibid.*, vol. 17, p. 320.

basis of some special power or quality that distinguishes the members from other men. Absolutely unskilled labor cannot be successfully unionized, for it is impossible to control the potential competition of the men who are unsuccessful in other trades. So too any trade which is likely to be entered by colored or alien labor, or by that of women or children, will be difficult to organize and still more difficult to keep organized. In confirmation of these views we find that the railway brotherhoods, in some respects the strongest of all labor unions, are free from all these forms of competition. Railway labor is a prerogative of the American male citizen. Neither negroes, women nor immigrants are trusted to run trains or to collect fares. In most of the branches of the iron and steel industries, immigration is an important factor, which may account for the comparative weakness of some of the unions.¹ In the tin-plate industry there are, indeed, a considerable number of immigrants, but these are highly skilled workmen from Wales, accustomed to a high standard of living, and even more favorable to labor organizations than are native Americans.² The glass workers are highly skilled,³ and have moreover strengthened their position of economic advantage by stringent apprenticeship rules. The treasurer of the Window Glass Cutters' League says:

In our league every man that is working has a right to teach his sons or brother. And then, outside of that, it depends on the demand for cutters. We do not want to teach more than just enough to keep supplied. We have done that all along with exceptions.⁴

Another witness says, concerning the attitude of the manufacturers: "When we started to regulate the apprenticeship system they objected some, but they submitted, because we had the power in our hands through the organization."⁵ The same union at one time imposed upon foreigners an initiation fee of \$500,⁶ and was instrumental in getting the first contract-labor law passed.⁷

¹ *Ibid.*, vol. 15, p. 425.

² *Ibid.*, vol. 7, p. 44.

³ *Ibid.*, vol. 7, p. 45.

⁷ *Ibid.*, vol. 7, p. 44.

² *Ibid.*, vol. 7, p. 393.

⁴ *Ibid.*, vol. 7, p. 928.

⁶ *Ibid.*, vol. 7, p. 928.

The Glass Bottle Blowers allow one apprentice to every fifteen journeymen, a ratio which seems hardly sufficient to keep up the number of trained men needed.¹ The by-laws prohibit the admission of foreign workmen save with the consent of the president and executive board. In the iron and steel trades there are no apprenticeship rules, but men are required "not to teach green hands save by consent of the lodge members."² The Iron Molders' Union allows one apprentice to each shop, and one to every eight molders employed therein, but it is said that these regulations are not enforced.³ Still it is apparent that there is, on the whole, a decided tendency towards the establishment of apprenticeship regulations.

Now these regulations are of great importance in connection with the relations between trusts and trade unions. It is obvious that a union of highly skilled workers, maintaining by its apprenticeship and immigration rules a close corporation, is in a position of such strategic importance that it can easily force from the trust some of its monopolistic profits. Such skilled workers have usually some money saved and are in a better position to hold out in the case of a strike than the average wage-worker. The trade union has been long organized and its members have a certain sense of solidarity. The trusts are in the formative period, and when a trust is just on the point of being launched, any mischance may ruin its prospects. In such a situation as has appeared in the cases of the glass trusts, the tin-plate trust and the wall-paper trust, the men may secure concessions which they could not have obtained from single or even from federated employers. The trust on its side is glad to see the trade union strong, because it will enforce on the independent producers a definite standard of wages, and so will prevent their gaining an economic advantage by lowering the price of labor. There may even be an understanding, express or tacit, that independent producers are not to be supplied with labor, and there is thus a fresh obstacle to the

¹ Industrial Commission, vol. 17, p. 123. There is, however, a considerable number of non-union shops, where more apprentices are taken. The president of the union assured the writer that throughout the trade the ratio of apprentices to journeymen was about one to three.

² *Ibid.*, vol. 7, p. 391.

³ *Ibid.*, vol. 17, p. 238.

entrance of competitors into the trade. The trust may in fact, by means of its alliance with the trade union, corner the available supply of skilled labor, and thus guard its position of monopoly by an additional fortification. The trade union will be specially inclined to favor the trust in trades where wages are determined by a sliding scale, provided there is openness and honesty in adjusting the scale; for in maintaining or raising prices, the trust will *ipso facto* maintain or raise the rate of wages. This appears to be the reason why the workmen looked with so much favor on the formation of the Pittsburg Coal Company¹ and of the tin-plate trust.²

V.

In regard to these alliances of laborers and capitalists views are held and forecasts attempted which to some extent run counter to those of the present writer, and which should be mentioned. The reader may have observed that the trusts forming alliances with the trade unions were, with the exception of the tin-plate trust, rather of the type of pool or cartell than completely unified trusts. They implied merely common selling agreements and a certain pooling of trade secrets; they did not involve a concentration of production in a few scientifically equipped establishments under a single management. And in fact the organ of the glass manufacturers refuses to admit that the combinations in the trade were of the nature of trusts, although they are so classed by the Industrial Commission. "The glass industry," it says, "is not

¹ *Ibid.*, vol. 13, p. 101.

² It would be an interesting inquiry whether in the case of such an alliance between a trust and a trade union, the union leaders would retain their objection to the system of profit sharing. So long as that system is adopted by one firm and not by another, the objection is intelligible, for it tends to break up that solidarity of class feeling which is the union's strength. But the situation appears to be decidedly modified when the union is not facing a group of more or less united employers, competing against one another, but is in alliance with a trust concentrating in itself by far the larger volume of business in that industry. Then the trade union might possibly be inclined to alter its views with regard to profit-sharing, stockholding by employees, or the provision of relief funds, hospitals, *etc.* by the capitalists.

yet sufficiently developed to be an object of trustification."¹ It may perhaps be held that, while the power of consolidated capital will be friendly to trade unionism during the first period of combination, yet, when once consolidation has been achieved, capital will endeavor to shake itself free from the trammels imposed on it by organized labor. It has indeed been hinted that recent movements in the tin-plate industry may admit of this interpretation, and it appears that the alliance in the window-glass combination is on the point of breaking down.² Time only can show how far this view is true.

But while this form of alliance between trust and trade union frequently breaks down, it tends constantly to reappear; and we may at all events conclude that while it continues in existence the work people are well able to take care of themselves in their struggle with the power of capital. Our concern should rather be for the consumers who suffer from the raising of prices, and for the unskilled workers and would-be learners, who by restrictive regulations are shut out from participation in the profits earned by the monopolized industry. By such an alliance between trust and trade union the power to raise prices, or lower quality with impunity is greatly increased. It is always a hazardous thing to enter into competition with a trust; but the risk will be doubled when to the possibility of cut-throat lowering of prices is added difficulty in obtaining the necessary supply of skilled labor. Under such circumstances, if the labor monopoly can really be maintained, the force of potential competition will be greatly diminished. On the other hand, the severely restrictive regulations concerning apprenticeship are a real grievance to the mass of young men who are growing up and are desirous of learning a trade. We may agree with the unionists that in the interest of the learners themselves absolutely free entrance to a trade is not desirable. The worker spends some years in obtaining the necessary skill, and has a right to expect that when he emerges from his apprenticeship he will have a reasonable likelihood of making a living. But the proportion so often found of one apprentice

¹ *National Glass Budget*, Jan. 24, 1903.

² Owing rather to the sudden introduction of machinery than to the inherent weakness of the agreement.

to ten journeymen is insufficient to maintain the trade at its existing level, much less to provide for its proper expansion.¹

This alliance between capitalists and skilled workmen would introduce a new cleavage into society. Instead of the horizontal division so constantly in our minds in studying the economic literature of thirty years ago, it introduces a vertical cleavage. The whole of one industry becomes concentrated; the trade unions, the producers of raw material, the manufacturers, wholesalers and retailers are federated together in one vast combination standing face to face with the consumers. Entrance into this circle of monopoly and consequent high profits is at any stage impossible save with the consent of those already in possession. If this movement of alliance between trust and trade union continues, it may become necessary to add to the program of trust regulation which is slowly taking shape, another program for the regulation of trade unions, which, while not interfering with their proper function of enforcing on all employers a definite standard of wages, hours and conditions of labor, shall insist that every qualified person shall be admitted to membership in the union, and that apprenticeship rules, if these are needed, shall be so framed as to prevent the growth of a close corporation.

But what of the other group of trusts, those which are indifferent or hostile to organized labor? In all these cases, the labor employed is of a lower grade: it does not demand the training,

¹ See an article by C. P. Sanger on "The Fair Number of Apprentices in a Trade" (*Economic Journal*, 1895, p. 616), where the whole question is discussed on actuarial grounds. In only one case does Mr. Sanger believe that the ratio of nine journeymen to one apprentice would be reasonable, and then only on the supposition (which is much less likely to be true in America than in England) that the trade is stationary. This matter of apprenticeship rules is one which requires careful investigation, the results of which might have much practical importance, since the American unions are tending in the direction of greater strictness. One union — that of the stove founders — bases its rules on a scientific investigation somewhat similar to Mr. Sanger's; in other cases the proportion is fixed by guess-work only, and there does not appear on the surface any reason why one apprentice to twenty-five journeymen should be the proportion enforced in the Chicago clothing trades, while in other industries two apprentices are allowed to five journeymen. The question is further complicated by the facts that frequently the regulations hold for only a portion of the trade, the non-union shops employing as many apprentices as they please, and that sometimes a man is allowed to teach his eldest son without any restrictions.

ability or moral character necessary for the work of glass blowers, machine printers, tin-plate workers or locomotive drivers. But unskilled labor implies a weak union; and a trust opposed by such a union knows that it can easily draw labor from other sources, and from its control of many establishments can put down a strike in one of them without any diminution of production, by a transference of business to other centres. This course was pursued by the American Smelting and Refining Company, when a strike occurred in one of its plants.¹ And if the already existing trust sees indications of organization among its workers, it is in a position to crush the nascent union far more promptly and energetically than can an independent producer. It can use the blacklist with greater certainty; its men, if discharged, have not the opportunity of finding work in the factory of another employer less hostile to unionism. In an industry where union among the men preceded amalgamation among the employers, the union is generally strong enough when such amalgamation is reached to insist on collective bargaining. This view with regard to railway labor is put very clearly in the final report of the Industrial Commission:

It has been asserted that the interests of labor would be jeopardized by any attempt either at pooling or consolidation on the part of the railroads, by reason of the fact that such agreements often provided for an exchange of facilities as between roads in case of the outbreak of labor difficulties upon any one of them. . . . The extension of the great railroad brotherhoods *has so far antedated* the extension of railroad consolidation as to diminish greatly the importance of this consideration. A strike upon any line in the country is now likely to involve by sympathy all competing lines.

But very different is the state of affairs when combination among the capitalists precedes organization among the workers. The trust is then in a position to "smash the unions" or prevent their growth; and motives for adopting this course will not be absent. Since in the trades which are still little organized, laborers are

¹ Industrial Commission, vol. 13, p. 98.

² *Ibid.*, vol. 19, p. 328. Italics not in original.

comparatively unskilled and wages also are low, the employers will not desire to see the union strong, even for the sake of forcing their competitors into paying the same rate of wages. The cost of wages will be of little importance, and other methods for fighting the independents are at hand, more efficacious, if not so conducive to the welfare of society at large. Moreover new unions lack experience; they are tactless in their dealings with employers they frequently aim at restriction of output and manifest more or less hostility to machinery; they make absurd claims with regard to the choice of their own foremen, *etc.* The trust has therefore every ground for fighting them and it very generally does so. In the tobacco and anthracite coal industry¹ consolidation among the capitalists preceded organization among the men. Therefore both combinations are bitterly opposed to the union and use all their vast power to crush it. In both cases the union had to deal with a great mass of surplus labor ready to enter the industry, and therefore it has found the work of organization exceedingly difficult. In those industries, then, employing relatively unskilled labor, hostility to labor organization will almost invariably be manifested by the capitalists and their officials. The managers will refuse to treat with any outside representatives of their employees; they will practise individual bargaining; any man who is notoriously discontented and strives to infect others with his own dissatisfaction will run the risk of immediate dismissal. The growth of organization among the men will be hindered from the outset by the enormous power and uniform administration of the trust. A successful strike will be impossible unless it can be secretly organized on a scale large enough to close every one of the trust's plants at once, and unless also the supply of surplus labor can be kept out by a rigid picketing. It is only too probable that under these circumstances trade-union propaganda will be accompanied by its worst features of secrecy and terrorism. The situation will be peculiarly difficult, and the feeling unusually bitter, when the rise of the trust is coincident with the introduction of new machinery which can be worked by unskilled labor. In such a case there will exist not merely the difficulty of orga-

¹ As far as concerns the last twenty-five years.

nizing a union of the fresh workers, but the union of the former skilled men, whose laboriously acquired technical skill has suddenly been rendered useless, will complicate the situation by its hostility at once to the combine and to the new unskilled worker. To some extent this is the situation to-day in the trade of cigar-making;¹ and a similar situation may develop, unless the union is skillfully guided, in the window-glass industry.

Now granting that in trust-controlled industries, where the labor employed is unskilled, the growth of unionism is likely to be checked, what is the probable effect on the condition of the laborer and on society generally? The laborer will be practically at the mercy of the combination. His wages can be reduced, his hours of work lengthened, his conditions of employment will steadily deteriorate and protest will be to him increasingly difficult. On the one hand his possible employers will become fewer, on the other, entrance into a skilled trade will become more difficult. The unskilled or little skilled laborer will be in a position of far greater dependence than he has ever known before; and, like all dependents, he will be subject to sudden outbursts of rage against his subordinate position and to the intoxication of power, should a slight success be achieved through combination with his fellows. Not improbably, therefore, in place of the slow growth of trade unionism, making steadily for conservatism and conciliation in dealing with employers, we shall see in this section of the labor world sudden and irrational outbursts, extravagant demands when a little success is gained, and a growing embitterment between laborers and capitalists.

VI.

It should be remembered, however, that in many respects the trust may be able to accord better treatment to its work people than the competing individual firm. When the first dismantling of superfluous factories and dismissal of workmen is at an end, there is assured to the employees one great blessing which can be obtained by no trade union methods at present known, *i.e.* continuity of employment. The combinations are relieved from the

¹ Probably also in watch-case engraving.

pressure of competition and can therefore afford to pay better wages. Whether they do so or not is still a disputed point. Wages appear on the whole to have risen among the employees of all trusts, but it is not clear that the rise is greater than that in competitive branches of industry. A recent bulletin of the Department of Labor says:

The only conclusion that can fairly be reached under the circumstances is that the combinations on the whole show the same tendency as the large private companies, and that so far as the figures go one cannot say that they have treated the laborer any less generously.¹

Sanitary and other conditions are likely on the whole to be better under the trusts, for they operate as a rule new plants specially built and planned for the trade in question. An inquiry into the hours of work in concerns under the control of trusts would be interesting. One of their methods of making profit is to get as much out of their fixed capital as possible; and they will therefore tend to keep the machinery working for longer hours. In all probability, then, in the matter of hours and of suitable seasons for work, the trust employees will tend to be worse off than those in the service of private firms.

So far as can be ascertained, not even the trusts employing unskilled labor have thus far depressed the rate of wages, but it is too soon to conclude that they will never use their undoubted power to do so. Hitherto the trusts have on the whole been passing through a period of great prosperity, and have had no motive to recoup themselves for their losses out of the earnings of their employees. But they may not always maintain this benevolent attitude. In a time of trade depression, an over-capitalized concern will certainly endeavor to make its men share in its losses. A strong trade union might be able to prevent reduction of wages, for it could close the factories and cut off all production whatever; but in an industry where mainly unskilled labor is employed and where the trade union is weak or non-existent, the men will be able to make no resistance. Their wages will be reduced and their standard of life lowered; and it is doubtful whether, in the absence

¹ Bulletin of Department of Labor, July, 1900, p. 692.

of organization, they will be able when good times come again, to recover the position they have lost.

VII.

The practical conclusion suggested by the facts presented — a conclusion sufficiently important both for the legislator and business man of to-day — is that the growth of trusts makes both possible and urgent a large extension of legislation dealing with labor. In the first section of the industrial field which we considered, the demand for legislation will come from the side of the consumers. The trade union, by its restrictive policy, will increase the monopolistic power of combinations of capital and will make entrance into a profitable field of employment difficult for the young man anxious to learn a trade. If the movement for incorporation of trade unions is carried further, or even if some system, short of incorporation and similar to the English method of registration, is adopted, it may be possible to establish supervision over the trade-union regulations — a supervision by which harmful and restrictive rules can be thrown out, while the trade unions are upheld in their proper work of establishing a definite standard of wages, hours and conditions, to which all factories must adhere. In the second section of industry subject to the trusts, trade unions should be strengthened, not weakened; for only thus can the workmen retain some measure of independence. Otherwise there will inevitably appear the “bondage to the job” and the consequent “feudalism” anticipated by a recent writer;¹ and we may hope, but can by no means be assured, that it will be “benevolent.” As therefore, in the first section, supervision is needed by trade unions, so here a wise public opinion will watch the attitude of the corporations, considering in the first place whether it may not be necessary to guard against the victimizing of unionists, and urging in the second place that all corporations shall consent to treat with unions that include a majority of their work people.²

¹ J. W. Ghent, *Our Benevolent Feudalism*.

² The Anthracite Commission's awards ix and iv amount practically to these regulations.

Moreover the community will be impelled, by the growth of trusts, to contemplate direct legislation concerning the conditions of employment. The unionists themselves, realizing in many trades their weakness as against the combinations of capital, will turn more and more to the collective powers of the state. They will agitate for the suppression of child labor, for the regulation of the labor of women, for prevention of blacklisting, for regulation of sanitary conditions and of the hours of labor. Such a movement will naturally be most evident among the weaker unions. Thus there is no stress laid on agitation for labor laws in the long established organizations in the metal and glass trades; but the unions of textile and tobacco workers display a distinctly socialistic trend.¹

To sum up, then, we find that, in a section of the industrial world, the trade unions, by fixing a definite level of labor cost, make combination among the capitalists easier and are therefore made humble partners in the trusts; in some cases, by restricting the amount of available labor, they succeed in drawing a portion of the profits into their own pockets. But in industries where the labor is unskilled and the wages are low, if the trust appears before the trade union, then combination among the capitalists makes organization among the workers more difficult and lessens their power of resisting unwise or unjust demands.

In both cases the movement toward greater public interference with industry will be strengthened; but in the one case it will proceed from the consumer, in the other from the producer.

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¹ Industrial Commission, vol. 17, p. 77.

STATE CENTRAL COMMITTEES.

A STUDY OF PARTY ORGANIZATION.

THE purpose of this sketch is to present a brief outline of the organization of the central or executive committees of the Republican and Democratic parties in the several states. The statements made are based in part on the written or printed rules of the several state organizations. Twenty-two of these organizations, twelve Republican and ten Democratic, publish manuals showing the structure of the party government in the state, and regulating in a more or less detailed way the powers and duties of the officers and sub-committees.¹ Where no such manuals are obtainable, the important facts have been supplied by the chairmen of the state committees on blank forms submitted to them for that purpose.² The principal points considered in this discussion are the basis of apportionment of membership on the state committee, the method of election, the term of office, vacancies and removals, officers and sub-committees, and the general powers of the central committee.

Apportionment of membership. — On examining the method of apportionment of membership on the committees, it appears that several different systems are in vogue. The various units on which representation is based are the congressional district, the county, the legislative district, representative or senatorial, the judicial district, and the town. There is also a mixed or composite basis. The prevailing practice is to use either the congressional district or the county as the unit of representation. Of the Republican organizations fifteen use the congressional district, and of the Democratic twelve, making a total of twenty-

¹ Republican: Connecticut, Indiana, Kentucky, Massachusetts, Ohio, Pennsylvania, Missouri, New Hampshire, Rhode Island, Tennessee, Virginia, West Virginia. Democratic: California, Colorado, Connecticut, Florida, Kentucky, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia.

² The Democratic organizations in Nebraska and Texas are omitted from this discussion, as no report has been obtained.

seven. The county is the unit in sixteen Republican committees and in twenty of the Democratic, making in all thirty-six. Of the ninety organizations, then, sixty-three employ either the congressional district or the county as the unit of representation. The legislative district is the basis in fourteen committees, nine Republican and five Democratic. The judicial district is used in two cases and the town in a like number. In some cases a mixed system is found, combining several methods. Of these the most remarkable is that of the Idaho Democratic committee, in which one member is taken from each of the five judicial districts, two are taken from each of the twenty-one counties, seven are chosen at large, and three so-called "press members" are selected in addition. In the Arkansas Democratic committee there is one member for each judicial district, one for each assembly district, and twenty are chosen at large. The California Democratic committee is composed of two members from each congressional district, one from each assembly district, and twenty at large. In the Republican committee of the same state, one member is allotted to each assembly district, and twenty-one are appointed at large by the chairman of the state convention. In many of the organizations already considered and classified, a number of members are appointed at large. In the Louisiana Democratic committee, thirty-five are thus appointed; in the California Republican committee, twenty-one; in the Louisiana Republican committee, twenty; in the Arkansas Republican committee, fifteen.

Which of these various methods shall be employed is determined by geographical rather than party considerations. The county system is employed almost exclusively in the far West, and to a considerable extent in the Northeast and in the South. The congressional district is employed in all of the Central states, except in the Democratic committee of Minnesota; to a considerable extent in the South; but nowhere in the East, except in the Republican committee in New York. The legislative district system has no particular habitat, except that it is not found in the Central states. Otherwise it may be encountered in any section of the country, as for example in Massachusetts, in Pennsylvania, in West Virginia, in Texas, and in California.

The apportionment of members to these various units is based

on geographical or territorial rather than numerical considerations. It is, in the main, not the party strength that is represented, but a given area or district. In some instances, however, recognition is given to the vote polled, although the principle is seldom fully carried out. In Nevada both organizations accord representation to each county in proportion to the party strength developed there. In the Democratic committees of Pennsylvania, and Colorado each county is given one representative, and one additional member for every 10,000 votes cast for the Democratic candidate for President at the preceding election. In the Maryland Republican organization membership on the committee is given to Baltimore and the various counties in proportion to the number of representatives that each has in the legislature. In other cases, large and populous counties or cities are allowed additional although not proportional representation. Thus in the Delaware Republican committee each county has three members, except Wilmington, which has four. In the New Jersey Republican committee each county has one representative, but Essex and Hudson are given two each. In the Minnesota Democratic committee the three largest counties have two representatives instead of one. On the other hand, there are states in which the rights of the local area are very carefully guarded. In the Pennsylvania Republican committee, for example, each senatorial district is given two representatives, and if there are two counties in the district each must have one member. In the North Dakota Democratic committee each legislative district is allowed one representative, but, as in Pennsylvania, if there is more than one county in the district each of them is entitled to a member. In general, the system of representation follows that of the state legislatures in the strong emphasis placed on the local units. The logical basis of representation on the state committee is the party strength in the given unit; but the feeling that the localities must be recognized is in most cases stronger than the demands of abstract logic, and the weakest district obtains equal representation with the strongest.

The size of the committee varies greatly in the different states. The largest is the Maryland Republican committee, which contains 124 members. The Colorado Republican committee has

114 members; the Louisiana Democratic, 111; the California Republican, 101; the New Hampshire Republican, 108. In the large Maryland committee membership is distributed among the localities in the same proportion as in the state legislature of that commonwealth. The Colorado committee is made up of two members for each of the fifty-seven counties of the state; that of Louisiana is based on a membership of two for each of the parishes and thirty-five at large; that of California is formed by allowing one member to each assembly district and adding to this the twenty-one members at large chosen by the state convention. Some of the committees, on the other hand, are comparatively small. Thus the Democratic and Republican committees of Virginia and of Iowa are each composed of only eleven members; and in many other states the committees are little larger.

Term of service. — The term of membership on the state committees varies from one to four years, but the most common period is two years. The one-year term prevails in both parties in Massachusetts, Rhode Island and Ohio, and also in the Pennsylvania Democratic organization. In West Virginia, Mississippi, Louisiana (both organizations) and in some other states, the term is four years. In New Jersey the term is three years in both parties, following the term of the governor of the state.

Method of election. — The election of members to the committee follows a general but not unvarying rule. In most cases the delegates to the state convention from the area to be represented, whether this be the congressional district, the county or some other area, choose their quota of members. For this purpose they caucus separately. The choice of the caucus is usually final, but in some cases the state convention has the right to reject the members selected. In some states, however, the members of the central committee are not selected in the state convention, but by the local authorities in the counties. Thus in the Republican organizations of New Jersey and Utah, and in the Democratic organizations of Pennsylvania and Washington, the members of the state committee are selected by the several county committees.¹ In Utah the chairmen of the county committees are *ex officio* members of the state committee. In other cases each county convention chooses its state committeeman; so in the Republican organ-

izations in Maryland and Utah and in the South Dakota Democratic organization. Still another method of selection is that employed in Florida, where, under the new primary law, the members of the central committee are chosen by direct vote of the party in the several districts. In Minnesota the members of the Republican state committee are selected by the chairman of the state convention on the nomination or suggestion of the candidates for state office in the ensuing campaign. In Tennessee, eight of the eighteen members of the Democratic state committee are appointed by the nominee for the office of governor. In states where the committee is partly composed of members at large, these members are selected by the state convention or by the chairman of the convention. A unique method of choosing the state committee is that provided for in the Wisconsin primary law, which is to be submitted to popular vote in 1904. Having abolished the state convention, the law proposes that, after the primaries, the party nominees for state office together with the candidates for the legislature shall meet and choose the state committee.¹ In Mississippi, where a state-wide direct primary law has been adopted, the state convention still assembles every four years, and at that time selects the state central committee.

Vacancies and removals. — Vacancies in the committee are in general filled by the remaining members. In a considerable number of states, however, there are exceptions to this rule. In states where the unit of representation is the county, the power to fill the vacancy is not infrequently lodged in the local committee; so in the Democratic organizations of Louisiana and Maine, and in the Republican organizations of Colorado, Maryland, New Jersey, Utah, Washington and Wyoming. In other cases the power to fill vacancies is vested in the executive committee of the state committee; and in some organizations the chairman of the state committee is empowered to fill the vacancy.²

The removal of members from the state committee seems not to be contemplated at all in some states. There is no provision

¹ These same persons, according to the provisions of this law, are also charged with the function of formulating the party platform.

² Democratic: New Hampshire, Massachusetts, Nevada, South Dakota. Republican: Montana, Minnesota, Rhode Island.

for removal in the state constitution of the party and there is no record of any such case. The chairman of the Delaware Republican organization states, in reply to the question touching removal, that "ostracism" is the only method known to him; and from Iowa comes the answer: "making it so hot for him that he will resign." But in many states there is a well defined understanding as to the process by which a recalcitrant or disloyal member may be removed from the managing committee. In the Montana Democratic committee a unanimous vote is required for removal; in the Kansas Democratic committee and in the Mississippi Republican committee a two-thirds vote is necessary; in other states a mere majority is deemed sufficient. In the Republican organizations of Georgia and of Utah the county convention possesses the power of removal.

Officers and sub-committees. — The officers of a state committee are few in number. There is a chairman, a secretary, a treasurer, and sometimes, in addition to these, a vice-chairman and a sergeant-at-arms. These functionaries are generally elected by the committee itself; but they need not be, and frequently are not, members of the committee. In most of the organizations there are sub-committees, of which the most important is the executive or campaign committee. This is usually composed of from three to nine members and is the most active part of the state organization. Another important committee is that on finance, and in many state organizations there is a separate auditing committee. A speakers' bureau or literary bureau or both are frequently found. Of all the officers the chairman and the secretary of the whole committee are the most important. Indeed, the campaign in many cases is really placed in the hands of these two men.

Powers. — The powers of the state central committee are seldom clearly defined, either by the written or by the unwritten constitution of the party. It can scarcely be said to govern and guide the party in the formulation and execution of policies, for as a rule this is a matter altogether outside its jurisdiction. The informal steering or managing committee which really determines the policy of the party is likely to be another group of politicians, although the actual leaders of course control the state committee through their agents and are sometimes found there in person.

The important powers and duties of a state committee, as of a national committee, center in the conduct of the campaign. Given the candidates and the platform, it is the function of the state committee to see that these particular persons and principles are endorsed by the voters of the state, or at least that the full party strength is polled for them. The state committee determines the time and place of the nominating convention, fixes the ratio of representation, and issues the call for the convention. It often makes up the temporary roll of the convention, suggests temporary officers of the convention, and in general assists in putting the machinery of the nominating body in operation. After the convention is over, the committee takes charge of the conduct of the campaign and exercises general supervision over its progress. The committee raises the funds necessary for the prosecution of the work and distributes them at its discretion. It prepares and sends out appropriate literature to strategic points within the state, and assigns speakers to places where it is supposed they will be most effective. In short, the state committee is the managing board entrusted with the conduct of the state campaign, and as such is expected to practise all the arts known to politicians to bring about the success of the party.

The adoption of the Australian ballot system has involved a legal recognition of the political party as sponsor for nominations to appear on the ballot under the party emblem or with the party name. The convention was declared the official representative of the party in the first instance, but it was found necessary to make further provision for vacancies caused by the death or disability of candidates for state office. The laws of most states accordingly authorize the state central committee of the party to fill vacancies occurring on the ticket.¹ In some of these laws this power is granted only in case there is not time to reconvene the convention; in others there is no such limitation. It is sometimes further provided that the substituted name must be that of a member of the party in question. Thus the Missouri statute reads: "No central committee shall have power to substitute, to fill any vacancy, the name of any person, who is not known to be of the

¹ Illinois Rev. Stat., sec. 296; Massachusetts Rev. Stat., ch. ii, sec. 152.

same belief and party as the person for whom he is substituted.”¹

In the conduct of a campaign the state committee coöperates with the national committee, and to some extent with the congressional committee. It must also be constantly in touch with the local organizations of the state. On the nature of the relation between the state and the local authorities, the printed rules of the state organizations present many interesting facts. In some instances the authority of the central committee over the local committees is very great. In Colorado, the Democratic state committee has full power, except during the session of the state convention,

to consider, pass upon and determine all controversies concerning the regularity of the organization of the party within and for any congressional district or county or city in the state of Colorado and also concerning the right to the use of the party name.²

Procedure in the case of contests is elaborately regulated, and full power is conferred on the committee to carry out its decrees. In Pennsylvania the Democratic state committee is empowered to examine the rules of party organizations, and to refuse representation in the state convention or the use of the party name unless the rules are such as to meet with its approval. The committee is empowered to “direct such changes as may appear necessary and expedient,” and to refuse recognition of the local committee until such changes are made.³ The rules of the Indiana Republican organization declare that the central committee has

immediate and full control of the political affairs of the Republican party in the state, the management of its campaigns, the collection and disbursement of funds, the selection of speakers, the distribution of documents, and generally shall adopt such honorable and vigorous measures as may be necessary to insure the success of the Republican party and the election of its members.⁴

¹ Missouri Rev. Stat., sec. 7088.

² Rules, sec. 7.

³ Rules, ii, sec. 3. *Cf.* the Democratic rules in Virginia and Kentucky.

⁴ *Cf.* the Republican rules in Kentucky, art. 3, and in Missouri, sec. 4.

Where the authority conferred on the central committee is not so extensive as in Colorado and Pennsylvania, the central organization is expected to watch over the local agents of the party, and to stimulate and encourage their activity in every possible way. Especially in localities where factional strife endangers the success of the party, it is the function of the state committee to act as a board of conciliation and arbitration and, if possible, bring about at least a temporary truce between the combatants. As the Missouri Court said in the case of *State v. Leseur*:

It would seem inherently necessary in all party organizations that there should be some governing head, some controlling power, some common arbiter, which, if emergency should arise therefor, can lay its hands on the heads of the warring factions within the party and compel the observance of wholesome regulations, conducive alike to efficient party organization, order, fair dealing and good government.¹

In another Missouri case, however, the interference of the state committee in local affairs was overruled by the supreme court of that state. In Jackson County there was a bitter factional fight between two wings of the Democratic party, and two conventions were held. Each convention nominated a set of candidates and each held that its nominees were the regular candidates of the Democratic party and entitled to appear as such on the official ballot. The state committee, after considering the case, decided that the proceedings were irregular in character and ordered a new convention. The case was carried to the supreme court, where it was held that one of the two sets of candidates was regularly nominated, and that the state committee had no authority to declare the nominations invalid without granting a hearing to both factions. The court said:

Before a committee organized for the efficient management of party affairs of the state at large can set aside the action of a party acting under its own local government, it must first be shown that the local organization has either become disrupted and disorganized, or that the nominations for a particular election have been procured by fraud or in disregard of the usages and customs of the party; and it inevitably

¹ 15 S. W. Rep. 539 (1891).

follows that the nominees of the local organization whose nominations are to be set aside shall be accorded a hearing and a time and place fixed for that hearing of which they shall have had reasonable notice, and an opportunity to present their evidence.¹

In conclusion it may be said that the plans of organization here outlined are by no means rigid and inflexible in their nature. They are convenient methods of directing campaign work, but they may be altered or radically changed by the action of the state convention. Thus in Illinois, in 1900, when the nominee of the Republican party for governor failed to secure a majority of the state central committee, a resolution was introduced in the convention increasing the number of the committee by the addition of eight members at large. This motion was declared carried by the chairman of the convention, who proceeded to name eight members in the interest of the gubernatorial candidate. In any party emergency, or in the course of a fierce factional fight, the rules governing the organization of the central committee are likely to be overridden by the stronger or more cunning. To infer, however, from such instances of intervention on the part of state conventions, that the organization of a state central committee is a matter of slight importance, and that it makes little difference in whose hands the control rests, would be quite erroneous. To the ambitious aspirant for party authority the state central committee is a point of great strategic importance, and many a bitter fight has been waged for its control. The possession of the central committee is, if not conclusive, at least presumptive evidence of party authority and control — one of the external marks of sovereignty.

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¹ *State v. Crittenden*, 64 S. W. Rep. 162, at 169. In the case of *Whipple v. Broad*, 55 Pacific Rep. 172, the Colorado court held that the removal of Broad, the chairman of the Silver Republican state central committee, by C. A. Towne, provisional chairman of the national committee, was unauthorized and could not affect the party standing of Broad.

AMERICAN MUNICIPAL COUNCILS.

CONSIDERING the amount of published discussion on municipal government in the United States, it is somewhat surprising that there should be a lack of definite information concerning the primary facts of municipal organization. Most of the literature, however, which deals with the structure of municipal government is devoted to advocacy of proposed changes; and references to existing conditions are either confessedly limited to a few cities, or are vague statements, often erroneous because made without the detailed investigation which must be the foundation of any safe generalization. Yet it would seem that the task of securing a satisfactory system of municipal organization would be aided by a comprehensive examination of existing methods; and that it would be worth while for students of this problem to understand with some degree of exactness what are the leading practices and prevailing tendencies of the time.

It is in this belief, and as a first step in this direction, that this paper has been prepared. Much of the information has been secured by a series of inquiries addressed to the cities which, according to the census of 1900, have a population of more than 25,000. The facts thus collected have been supplemented by other data from various sources. The study deals for the most part with the structural organization of municipal councils. Some remarks are added in reference to the general character of the powers conferred on these bodies; but there is no attempt to analyze the minutely enumerated "powers" — which are in fact rather limitations — which form so large a part of most municipal charters.

Number of chambers.—In the early days American city councils were always single bodies, like the town councils in England after which they were modelled. During the nineteenth century the bicameral system was introduced in many cities, sometimes in imitation of the bicameral state legislatures and the federal Congress, but in Massachusetts as a development from the town meeting

government. At one time or another most of the large cities have had a bicameral council; and, while many of them have returned to the single-house system, two councils are still found in Philadelphia, St. Louis, Boston, Baltimore, Buffalo and Pittsburg — one-half of the cities with over 300,000 population. Apart from the large cities, the bicameral system is now almost confined to New England, Pennsylvania, Virginia and Kentucky; but there are a few other sporadic cases, as in St. Paul, Atlanta, Wheeling, Mobile and Chattanooga. In the United States as a whole, about one third of the cities of over 25,000 population have the bicameral system. In the smaller cities the proportion is less: in 1892, out of 376 cities with over 8,000 inhabitants, only 82 had a bicameral council. The single-chamber council, which has always been the more prevalent form,¹ is found, among the large cities, in New York, Chicago, Cleveland, Cincinnati, San Francisco, New Orleans, Detroit and Milwaukee.

In some cities which have nominally only a single council there is another body, which, although ostensibly only an executive authority, has some resemblance to a second branch of the council. Such bodies are the boards of estimates in New York City and in the four cities of the second class in New York State, and the boards of public service in Ohio cities.

Number of members.— In this respect there is naturally a wide difference between large and small cities; but there is seldom any definite relation between the size of a city and the size of its council. For the most part the councils are smaller than in European cities. Philadelphia, with 41 members in the select council and 149 in the common council, has by far the largest membership. Next to this come Boston with 88 members in two councils, New York with 79 members, and Chicago with 70, in a single chamber. There are few other cities with more than forty members, and by far the larger number have less than thirty. In New England cities the councils are usually larger in proportion to the population than in other parts of the country. Some cities

¹ Mr. Bryce's statement (*American Commonwealth*, ch. 50) that the bicameral system is the more common must have been based on limited investigation, confined to the larger cities of the Eastern states.

have strikingly small councils. San Francisco has only eighteen members, New Orleans only seventeen, and the cities of Iowa from six to ten. In Memphis the council consists of the board of fire and police commissioners and the board of public works, meeting as one body of eleven members. In Galveston the powers of a council are exercised by a board of four commissioners, two of whom are elected and two appointed by the governor of the state.

Term of service. — The term of service in municipal councils varies from one to four years in different cities; but the prevailing period is clearly two years. In New England annual elections for the whole membership of the council are still almost universal. Elsewhere biennial terms are to be found with few exceptions; but in many places one-half of the members are chosen each alternate year, so that there is a municipal election every year. The most important instances of longer terms may be noted. In Philadelphia, while the members of the common council serve for two years, those in the select council are chosen for three years. So too in St. Louis and Buffalo, while the larger chambers of the councils have a two-year term, the members of the smaller chambers are elected for four years. A three-year term is also found in Mobile for both branches of the council; and a four-year term in Memphis, Evansville, Charleston, Birmingham, Sacramento and La Crosse.

These short terms for members of city councils are not offset by any strong tendency to continuous re-election; and, as a result of the almost complete changes which take place, generally within two years, there is little opportunity for members of the councils to acquire experience in municipal affairs. Specific information about the length of service is difficult to obtain; but the following data for a few cities will illustrate the general statement. From 1836 to 1900 there had been in Newark, New Jersey, a total of 569 aldermen. Of these 342, about 60 per cent, had held the position for two years or less; 49 had served for three years, and 117 for four years. Only 61, or a little over ten per cent, had served for more than four years; and 40 of these had only one or two years

Of the remaining 21, 17 were aldermen from seven
and the four holding records for longest service

held the positions for 13, 14, 16 and 22 years respectively.¹ The St. Louis house of delegates for 1899-1901 had among its 28 members but eight who had served in the previous house, and only two who had a longer term of service. One of these two, however, had been a member of the house for 14 years.² The Cincinnati board of legislation in 1900, out of 31 members, had four who were also on the board in 1895. The Cleveland council of 1901-02 had not a single member who was on the council in 1895.

The Chicago council in recent years shows a larger proportion of re-elections. Of the 35 members whose terms expired in the spring of 1902, 22 (nearly two-thirds) were re-elected and have now completed their fourth year, at least, of service. Seven have served for six years, four for eight years, and one member has been in the council for 14 years. At the council election in Detroit in 1901, seven of the 17 members chosen were re-elected.

Mode of election. — Members are for the most part chosen by wards or districts. This system is almost universal for single-chambered councils and for the larger house in bicameral councils. Most often each district chooses one or two members. The number of cities having one member from each district and the number having two are nearly the same; but in the large cities the one-member district is more general, this plan being followed in New York, St. Louis, Baltimore, Buffalo, Cleveland and Cincinnati, while the two-member plan is followed in Chicago and Detroit. Boston and many other New England cities have three members from each ward; while a few cities in New England and Pennsylvania (Philadelphia, Pittsburg and Allegheny) have a variable number — presumably in proportion to the population of the various districts.

It has often been urged that this district system constitutes one of the main factors in the election of inferior and dishonest members of municipal councils. It is contended that at best it lends itself to the election of members who will pay more attention to the needs of their district than to the larger interests of the city as

¹ Compiled from Common Council Manual for Newark, 1900, pp. 148-155.

² Municipal Code of St. Louis, 1900, pp. 1011-1026.

a whole; and that the concentration of the worst elements of the city's population in some wards makes inevitable the election of a number of very objectionable members. Moreover the ward lines seldom mark off any natural divisions of the city, with a developed local sentiment and opinion; and the making and changing of ward boundaries lends itself to artificial gerrymandering for partisan purposes. Even without deliberate gerrymandering, it is quite possible, under the district system, for a minority of the voters to elect a majority of the council; or for a comparatively small majority to elect practically the whole council.

In rapidly growing cities other difficulties are introduced. The increase in population is not spread uniformly over the whole city, but is concentrated in certain districts, while at the same time there is a decrease of residents in the business sections; and it is thus almost impossible, if the prevailing system of equal representation in each ward is maintained, to adhere even approximately to the theory of representation in proportion to population. The subjoined table demonstrates this inequality for a number of the larger cities;¹ and similar if less striking figures might be given for the smaller cities. It is, moreover, of special significance that, in the largest cities at least, the districts with relatively small and

¹ MUNICIPAL WARD AND DISTRICT POPULATIONS, 1900.

	MOST POPULOUS DISTRICT	LEAST POPULOUS DISTRICT	AVERAGE DISTRICT POPULATION	NO. DIST- RICTS	NO. 20% OVER AVERAGE	NO. 20% UNDER AVERAGE
New York*	122,395	25,959	60,000	35	10	14
Chicago	106,124	11,795	49,000	35	10	17
Philadelphia	65,372	6,953	32,000	41	14	17
Boston	32,566	12,840	22,000	25	5	3
St. Louis	27,998	12,212	20,000	28	5	3
Baltimore	24,117	19,201	21,000	24	0	0
Cleveland	60,504	17,679	34,700	11	4	4
Buffalo	29,414	6,488	14,000	25	6	13
San Francisco	27,836	12,797	19,000	18	4	2
Cincinnati	15,995	3,763	10,000	31	11	6
Pittsburg	22,669	660	8,500	38	12	20
New Orleans	31,663	4,484	17,000	17	6	5
Detroit	28,281	9,313	17,000	17	2	3
Milwaukee	21,903	5,418	13,500	21	8	6

* Manhattan and Bronx.

decreasing population, which thus have an excessive representation in the councils, are often districts where the worst elements of the population are to be found. If the districts were of equal area, the congestion in the slum districts would give the opposite effect; but the small area of the slum wards, and the tendency of population there to decrease as the business sections develop, bring about this over-representation of such wards. Thus in New York the Battery district is the smallest; and in Chicago, before the recent re-districting, the first ward was one of the smallest.

Some exceptions to the prevailing system of district representation should be noted. Where the single-chamber council exists, the most general of these exceptions is the election, in addition to the ward representatives, of a small number of members from the city at large. This plan is followed regularly in Indiana and Iowa, has been adopted in the new Ohio code, and is found in a few other sporadic cases.¹ In a few cases all of the members are elected at large, as in the board of supervisors which takes the place of the council in San Francisco, and the boards which act as the council in Memphis. More frequently, the smaller body in a bicameral council is elected from the whole city instead of by wards; indeed, for these bodies the general ticket system is almost as common as the district system. This general ticket system is followed in St. Louis, Buffalo, Louisville, St. Paul, and commonly in Massachusetts and Kentucky. But in Boston the aldermen have been chosen by districts; and in the Pennsylvania cities select councils are elected by wards, each ward having one member in these bodies, irrespective of population, while in the common councils the representation of wards is apportioned on the basis of population.

Minority representation.— Under a general ticket system of voting one party is almost certain to elect all of the members chosen at one election, and a large minority of voters — or even a majority, if the election is decided by a plurality — may have no representation in the council. To obviate such a result, various schemes of voting have been devised; and several of them have been put

¹ San Antonio, Dallas, and Montgomery.

in operation, but only in a few places, and usually to be abandoned after a few years. In New York City an elected board of ten governors for the almshouse was established in 1849, two to be chosen each year. Each voter had but one vote and the two candidates who received the largest number of votes were elected. In 1857 a board of supervisors for New York County was established to be chosen on a similar plan. Each voter could vote for but six of the twelve members to be chosen; the six candidates receiving the largest vote were declared elected, and the six candidates next in the order of their vote were to be appointed by the board. These methods gave the principal minority party equal representation with the party casting the largest vote. A slightly different method was followed for the New York board of education in 1869, when there were seven elected members and five appointed from the candidates next in number of votes to those elected. From 1873 to 1882 a similar system of minority representation was in operation in New York City for the election of the municipal council. Six aldermen were chosen at large, but no elector could vote for more than four; the remainder were elected in five districts, each choosing three members, but no elector could vote for more than two.¹ Some time after these experiments had been abandoned in New York, the same principle of limited voting was applied in Boston, in 1893, for the board of aldermen — the smaller branch of the city council. The twelve aldermen were elected at large; but no elector could vote for more than seven. After a few years this arrangement was abandoned, but a somewhat similar plan went into operation in the fall of 1903. A slightly different plan, which secures much the same results, is now in operation for the election of the board of sanitary trustees in Chicago. Each voter has nine votes — the same number as the number of members on the board — and these

¹ *POLITICAL SCIENCE QUARTERLY*, xiv, 691. Under this system not only were a considerable number of Republican members elected, but the different factions of the Democratic party were also represented. The change to the single-member system was made without discussion or popular demand, and there seems reason to think that it was made in the interest of uniting the Democratic factions under one control. It is perhaps significant that within two years after the system of minority representation was abandoned a board of aldermen was elected which became notorious for the bribery of its members.

votes may be given one to each of nine candidates, or they may be distributed among not less than five candidates.

These plans of limited voting ensure a certain kind of minority representation; and some of the earlier plans gave a larger representation to minorities than they could justly claim on the principle of majority rule. All of these devices are open to serious objections. On the one hand, the courts have held, in some states, that where an elector is not permitted to vote for the full number of persons to be elected, he is deprived of his constitutional rights. On the other hand, these plans have been criticised from the point of view of public policy. Resting as they do on the assumption that the voters are permanently divided into two organized parties, they tend to promote the conduct and control of municipal elections by the national party organizations. This reduces the influence of independent voters. Even where such voters hold the balance of power, they can control the election only of one or two members; and in most cases a nomination by either of the principal parties has proved to be almost equivalent to an election.

Other plans of minority and proportional representation have been proposed and discussed; but none except those described above have as yet been put in operation in municipal elections in this country. Among the plans proposed is that of cumulative voting, which has been employed with considerable satisfaction in Illinois since 1870, for electing members of the State House of Representatives.¹

Compensation. — Some financial compensation or salary is paid to members of municipal councils in nearly all of the large cities, and in the majority of the smaller cities. The largest salary, \$2,000 a year, is paid to the New York aldermen. The members of the Chicago council and of the Boston board of aldermen have each \$1,500. The annual stipend is \$1,200 in San Francisco, Detroit and Los Angeles; and \$1,000 in Baltimore, Buffalo and Denver. In other cities the amount is usually between \$200 and \$400, or,

¹ Cumulative voting has been held to be unconstitutional in Michigan (84 Michigan, 228); and probably in most states an amendment to the state constitution would be necessary before it could be legally established.

in smaller places, from \$2 to \$5 per meeting. Even in the St. Louis assembly and in the Boston common council the members receive only \$300 a year. Where the compensation is a fixed amount per meeting the payment is often dependent upon attendance; and in other cases there is a reduction in salary or a fine imposed for absence. In some cases the president of the council receives a larger salary than the other members; and in New York City this official is paid \$5,000 a year.

In many cities, however, the older rule of no salaries to members of municipal councils is still followed. This is almost the universal rule in New England (except in Boston) and in Pennsylvania; it obtains frequently in New Jersey and in the Southern states, and occasionally in other states.¹ The largest cities where no salaries are paid are Philadelphia, Pittsburg, Newark, Jersey City and Louisville.

Social standing of councillors. — The inferior standing and character of persons elected to large American city councils has been a frequent subject of remark, but there have been few attempts to study this point in detail. In 1895 Mayor Matthews, of Boston, collected some definite facts on this point for the city of Boston. He presented statistics showing that, during the first fifty years after the creation of the city government in 1822, from 85 to 95 per cent of the members of the council were owners of property assessed for taxation; but that after 1875 the proportion had rapidly declined, and in 1895 less than 30 per cent of the council members were property owners. Not only had the percentage of property owners declined, but the total assessed value of property owned by council members, which had been \$986,400 in 1822, and \$2,300,400 in 1875, had fallen to \$372,000 in 1894. Mr. Matthews' statistics are reproduced in the table on the following page.

Meetings. — Regular meetings of councils in large American cities are usually held on a fixed evening in each week; in less important cities, including, however, such places as Milwaukee and Toledo, once a fortnight; and in the smaller cities often not

¹ In the states of the Middle West the only instance among cities of over 25,000 appears to be Oshkosh, Wisconsin.

PROPERTY INTERESTS OF MEMBERS OF THE BOSTON CITY COUNCIL.¹

BOARD OF ALDERMEN.

YEAR	NO. OF MEMBERS	NO. ASSESSED	PER CENT OF MEMBERS ASSESSED	AMOUNTS ASSESSED TO MEMBERS	TOTAL ASSESSED VALUATION OF CITY	PERCENTAGE OF TOTAL VALUATION ASSESSED TO MEMBERS
1822	8	8	100.00	\$146,100	\$42,140,200	.00347
1830	8	8	100.00	99,400	59,586,000	.00167
1840	8	8	100.00	168,800	94,581,600	.00178
1850	8	8	100.00	261,800	180,000,500	.00145
1860	12	12	100.00	622,900	276,861,000	.00225
1870	12	12	100.00	476,200	584,089,400	.00081
1875	12	12	100.00	769,600	793,961,895	.00097
1880	13	11	84.61	197,900	639,462,495	.00031
1885	12	7	58.33	457,900	685,579,072	.00067
1890	12	8	66.66	206,200	822,041,800	.00025
1895	12	9	75.00	105,500	928,109,042	.00013

COMMON COUNCIL.

1822	48	45	93.75	840,300	42,140,200	.01994
1830	49	38	77.55	228,300	59,586,000	.00383
1840	48	40	83.33	204,400	94,581,600	.00216
1850	48	36	75.00	225,850	180,000,500	.00125
1860	48	41	85.41	1,116,400	276,861,000	.00403
1870	64	56	87.50	1,050,900	584,089,400	.00180
1875	74	61	82.43	1,530,800	793,961,895	.00192
1880	75	42	56.00	667,000	639,462,495	.00143
1885	72	29	40.55	290,300	685,579,072	.00042
1890	73	20	27.39	315,700	822,041,800	.00038
1895	75	16	20.33	266,500	928,109,042	.00029

more than once a month. In small cities and also in some important cities, as Chicago, Providence and Grand Rapids, the mayor presides; but in most large cities there is usually a president of the council, sometimes chosen by the council, sometimes elected as a councilman for the whole city.

Committees. — As in Congress and the state legislatures, much of the effective work of municipal councils is performed by standing committees. In most large cities there are from fifteen to twenty-five regular committees, appointed to different branches of municipal administration. Some cities with bicameral councils provide for joint committees of the two chambers, and in this way reduce the chances for a deadlock. The number of committees

¹ N. Matthews, City Government of Boston, p. 171.

and the subjects referred to each vary from time to time in each city.¹ These committees have normally from three to seven members. They hold meetings at irregular intervals, according to the business before them. In small cities they have often direct supervision over the technical agents and the employees of the city in their respective branches of administration; and often, while special administrative officers or boards have been created for some department in a given city, other departments remain under the immediate control of council committees.

Powers. — It would serve little purpose to examine the host of detailed powers granted to city councils under the system of special legislation, enumerated powers and strict construction which prevails in all of the states. But a few remarks may be made about each of the two primary divisions, into which these powers may be classified: the control over administrative officers, and the power of enacting ordinances.

Control over administration. — While both Congress and the state legislatures have and exercise large powers in the creation of administrative offices, municipal councils in most states have very limited powers in this direction. The general situation on this point has been well summarized by Judge Dillon:

The charter or constitution of the corporation usually provides with care as to all the principal officers, such as mayor, aldermen, marshal, clerk, treasurer, and the like, and prescribes their general duties. This leaves but little necessity or room for the exercise of any implied power to create other offices and appoint other officers. It is supposed, however, when not in contravention of the charter, that municipal corporations may to a limited extent have as incidental to express powers the right to create certain minor offices of a ministerial or executive nature. Thus, if power be conferred to provide for the health of the inhabitants, this would give the corporation the right to pass ordinances to secure this end, and the execution of such ordinance might be committed to a health officer, although no such officer be specifically named in

¹ Detroit has at present the following list: Ways and means, claims and accounts, judiciary, franchises, grade separation, streets, fire limits, house of correction, public buildings, sewers, taxes, street openings, printing, markets, public lighting, parks and boulevards, ordinances, pounds, health, licenses, city hospitals, liquor bonds, rules, charter and city legislation, and bridges.

the organic act, if this course would not conflict with any of its provisions. But the power to create offices even of this character would be limited to such as the nature of the duties devolved by charter or statute on the corporation naturally and reasonably require.¹

The general law governing municipal corporations in Illinois gives the city councils in that state a much larger field for the creation of local offices than is usually possessed. This statute provides only for a city council, mayor, clerk, attorney and treasurer, and then authorizes the council by a two-thirds vote to establish such other offices as it deems necessary and to discontinue any of these offices by a like vote. In the words of the statute:

The city council may in its discretion, from time to time, by ordinance passed by a vote of two-thirds of all the aldermen elected, provide for the election by the legal voters of the city or the appointment by the mayor with the approval of the city council of a city collector, a city marshal, a city superintendent of streets, a corporation counsel, a city comptroller, or any or either of them, and *such other officers* as may by said council be deemed necessary or expedient. The city council may by a like vote, by ordinance or resolution, to take effect at the end of their fiscal year, discontinue any office so created and devolve the duties thereof on any other officer.²

In many cities the councils retain a considerable power of appointment to municipal offices. The position of city clerk is more frequently filled by council appointment than in any other way.³ Less frequently the councils elect to other offices, and sometimes fill all important positions. This large appointing power is found in Minneapolis, Providence, generally in New England (except Boston and Connecticut cities) and Pennsylvania (except the four largest cities) and in some smaller cities, as St. Joseph, Birming-

¹ Dillon, *Municipal Corporations*, § 207.

² Revised Statutes of Illinois, 1899, ch. 24, § 73.

³ The council does not select this officer in Chicago, St. Louis, San Francisco, Detroit or Indianapolis, nor generally in the cities of Illinois, Indiana, Michigan, Wisconsin, Kentucky or Missouri.

ham, Montgomery and Fort Worth. More often, however, offices other than that of city clerk are filled by election, or by the nomination of the mayor, subject to confirmation of the council. In some cities this power of the council to confirm is used by individual members of the council to dictate nominations; but in other cities, as in Chicago and Cleveland, the mayor's nominations are regularly confirmed. In a number of larger cities even the power of confirmation has been taken away; but this development might more properly be noted in a study of the powers of the mayor.

The council has nearly always the right to receive reports from the various municipal departments, and to investigate the work of the departments by means of its committees. The control exercised in this way is made effective by the power of the council over the finances, and especially by its authority over appropriations. It has often happened, however, that this power has been used not to limit but to increase the expenditures, and in such a way as to help the aldermen's political prospects rather than for the best interests of the city. In consequence of this, in some important cities the financial powers of the councils have been very materially limited. In the principal cities of New York State the councils cannot increase the appropriations above the sums placed in the budget by the board of estimates—a device similar to that followed voluntarily by the British House of Commons. In Chicago, on the other hand, the finance committee of the city council has a large influence in determining the appropriations.

Ordinance power.—Judicial decisions have laid down certain general principles which govern and limit the ordinance power of municipal councils. Municipal ordinances must be reasonable and lawful; they must not be oppressive in character; they must be impartial, fair and general in their application; and they must be consistent with the public policy of the state as declared in general legislation.

The output of city ordinances generally varies with the size of the city; and in the large cities the enormous total is far beyond the power of any individual to comprehend. The New York ordinances make a comparatively small volume of 250 pages; but this

is because so much that elsewhere is done by council ordinance is done for New York by legislative enactments and is found in the 900 pages of the city charter, while many ordinances are established by the police, health and other administrative departments. The Chicago ordinances are in two thick volumes of 1,000 pages each; those of St. Louis cover more than 500 large pages of fine print; small cities usually have all their ordinances in a pamphlet of perhaps not more than 100 pages.

In most cases this mass of municipal law is printed without any attempt at systematic classification. A frequent method is to arrange the ordinances by subjects, in alphabetical order. The city of Nashville, however, commendably publishes its ordinances according to a definite system which groups together those covering related subjects. The first part presents the ordinances relating to the election and appointment of municipal officers. The second part gives the ordinances governing the duties of the various municipal departments. The third part has the police regulations affecting the general public, in two divisions: one containing the ordinances to secure order, decency and good morals; the other, the ordinances for public convenience and safety. The fourth part includes the ordinances on financial affairs, including the permanent tax laws, the annual budget, and ordinances providing for bond issues. The fifth part gives the municipal and ward boundaries. In an appendix are collected the grants and franchises to railroads, lighting plants, telegraph and telephone companies, and other special privileges.

Statistics. — In the following pages tabulated statistics are presented, showing the organization of the municipal councils in nearly all the American cities which, according to the census of 1900, had a population of 25,000 or more.

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STATISTICS OF AMERICAN CITY COUNCILS, 1903.

	SINGLE OR LARGER HOUSE				SMALLER HOUSE			
	NO. OF MEMBERS	HOW CHOSEN ⁽¹⁾	TERM	SALARY ⁽²⁾	NO. OF MEMBERS	HOW CHOSEN ⁽¹⁾	TERM	SALARY ⁽²⁾
New York	79	73 + 6	2	\$2,000				
Chicago	70	2 × 35	2	1,500				
Philadelphia	149	n × 41	2	none	41	1 × 41	3	none
St. Louis	28	1 × 28	2	300	13	A. L.	4	\$300
Boston	75	3 × 25	1	300	13	A. L.	2	1,500
Baltimore	24	1 × 24	2	1,000	8		2	1,000
Cleveland	33	27 + 6	2	600				
Buffalo	25	1 × 25	2	1,000	9	A. L.	4	1,000
San Francisco	18	A. L.	2	1,200				
Cincinnati	32	26 + 6	2	1,200				
New Orleans	17	1 × 17	4	240				
Pittsburg	51	n × 38	2	none	38	1 × 38	4	none
Detroit	34	2 × 17	2	1,200				
Milwaukee	46	2 × 23	2	400				
Washington ³								
Newark	30	2 × 15	2					
Jersey City	25	2 × 12	2	none				
Louisville	24	2 × 12	2		12	A. L.	2	
Minneapolis	26	2 × 13	4	500				
Providence ⁴	40	4 × 10	1	300	10	×	1	500
Indianapolis	21	15 + 6	5	150				
Kansas City	14	1 × 14	2	300	14	A. L.	4	300
St. Paul	11	1 × 11	2	100	9	A. L.	2	100
Rochester	20	1 × 20	2					
Denver	16	1 × 16	2	1,000				
Toledo	16	13 + 3	2					
Allegheny	40	n × 15	2	none	15		4	none
Columbus, O.	15	12 + 3	2	442				
Worcester	24	3 × 8	1	none	9		2	none
Syracuse	19	1 × 19	2	200				
New Haven	45	3 × 15	2		30		2	
Paterson	22	× 8	2	400				
Fall River	27	18 + 9	2					
St. Joseph	15	2 × 7	2	200	9		2	200
Omaha	9		3	900				
Los Angeles	9	1 × 9	2	1,200				
Memphis ⁵	11	A. L.	4	120				
Scranton		× 21						
Lowell	27	3 × 9	1	none	9	A. L.	1	none
Albany	19	1 × 19	2	500				
Cambridge	22	2 × 11	1		11	A. L.	1	
Portland, Or.	11	1 × 11	2	none				
Atlanta	14	2 × 7	2	300	7	1 × 7	3	300
Grand Rapids	24	2 × 12	2	350				
Dayton	13	10 + 3	2	350				
Richmond	35	n × 6	2		21		2	
Nashville	20	1 × 20	2	5 ⁽⁶⁾				
Seattle	13	9 + 4	3-4	900				

STATISTICS OF AMERICAN CITY COUNCILS. (Continued.)

	SINGLE OR LARGER HOUSE				SMALLER HOUSE			
	NO. OF MEMBERS	HOW CHOSEN (1)	TERM	SALARY (2)	NO. OF MEMBERS	HOW CHOSEN (1)	TERM	SALARY (2)
Hartford	40	4 × 10	1	none	20	×	2	none
Reading	16	1 × 16	2	none				
Wilmington, Del.	13		2	\$240				
Camden, N.J.	25	2 × 12	2					
Trenton, N.J.	28	2 × 14	2					
Bridgeport, Conn.	24	1 × 24	2	none				
Lynn, Mass.	25	n × 7	1		11	A. L.	1	\$300
Oakland, Cal.	11	?	2	480				
Lawrence, Mass.	18	3 × 6	1	none	6	1 × 6	1	none
New Bedford, Mass.	24	4 × 6	1	none	6		1	100
Des Moines, Ia.	9	7 + 2	2	250				
Springfield, Mass.	18	n × 8	2		8		2	
Somerville, Mass.	14	2 × 7	1	none	7		1	none
Troy, N.Y.	17	1 × 17	2					
Hoboken, N.J.	10	2 × 5	2	400				
Evansville, Ind.	11	7 + 4	4	150				
Manchester, N.H.	30	3 × 10	2	none	10	×	2	3 ⁽⁹⁾
Utica, N.Y.	15	1 × 15	2	300				
Peoria, Ill.	14	2 × 7	2	3 ⁽⁹⁾				
Charleston, S.C.	24	12 + 12	4					
Savannah, Ga.	12	A. L.	2	none				
Salt Lake City	15	3 × 5	2	420				
San Antonio, Tex.	12	8 + 4	2	5 ⁽⁹⁾				
Duluth, Minn.	16	2 × 8	2	300				
Erie, Pa.	12	2 × 6						
Elizabeth, N.J.	24	2 × 12	2	1				
Wilkesbarre, Pa.	16	1 × 16	2					
Kansas City, Kan.			2	none				
Harrisburg, Pa.								
Portland, Me.	27	3 × 9	1		9	×	1	
Yonkers, N.Y.	14	2 × 7		500				
Norfolk, Va.								
Waterbury, Conn.	15	3 × 5	2	none				
Holyoke, Mass.	21	7 + 14						
Fort Wayne, Ind.	20	2 × 10	2	150				
Youngstown, O.	10	7 + 3	2	150				
Houston, Tex.	12	A. L.		5 ⁽⁹⁾				
Covington, Ky.								
Akron, O.	10	7 + 3						
Dallas, Tex.	12	8 + 4	2	120				
Saginaw, Mich.	20	1 × 20	2	2 ⁽⁹⁾				
Lancaster, Pa.	27	3 × 9	1		?			
Lincoln, Neb.		× 7	2	300				
Brockton, Mass.	21	3 × 7	1		7	1 × 7	1	
Binghamton, N.Y.	13	1 × 13	2	300				
Augusta, Ga.	15	3 × 5	3	150				
Pawtucket, R.I. ⁴	18	n × 5	1	100	6	5 + 1	1	150
Altoona, Pa.								
Wheeling, W. Va.	28	n × 8	2	none	16	2 × 8	4	none

STATISTICS OF AMERICAN CITY COUNCILS. (Continued.)

	SINGLE OR LARGER HOUSE				SMALLER HOUSE			
	NO. OF MEM-BERS	HOW CHOSEN (1)	TERM	SALARY (2)	NO. OF MEM-BERS	HOW CHOSEN (1)	TERM	SALARY (2)
Mobile, Ala.	8	1 × 8	3	none	7	A. L.	3	none
Birmingham, Ala.	18	2 × 9	4	none				
Little Rock, Ark.	16	2 × 8	2	\$120				
Springfield, O.	9	6 + 3						
Galveston, Tex.	4	A. L.	2	500				
Tacoma, Wash.	16	2 × 8	2	300				
Haverhill, Mass.	14	2 × 7	1	none	7		1	none
Spokane, Wash.								
Terre Haute, Ind.	9	6 + 3	2	150				
Dubuque, Ia.	7	5 + 2	2	300				
Quincy, Ill.	14	2 × 7	2	156				
South Bend, Ind.	10	7 + 3	2	150				
Salem, Mass.	24	4 × 6	1	none				
Johnstown, Pa.	21	1 × 21	2		21	1 × 21	4	
Elmira, N.Y.	24	2 × 12	2	100				
Allentown, Pa.	22	2 × 11						
Davenport, Ia.	8	6 + 2	2	300				
McKeesport, Pa.	22	2 × 11	2	none	11	1 × 11	2	none
Springfield, Ill.	14	2 × 7	2	156				
Chelsea, Mass.	15	5 + 10	1-2					
Chester, Pa.	22	2 × 11	2	none				
York, Pa.								
Malden, Mass.	21	3 × 7	1		7	1 × 7	1	
Topeka, Kan.		× 6	2	200				
Newton, Mass.	21	14 × 7	1-2					
Sioux City, Ia.	10	8 × 2	2	200				
Bayonne, N.J.	11	10 + 1	2					
Knoxville, Tenn.		× 11						
Chattanooga, Tenn.	12	A. L.	2	100	8	1 × 8	2	\$75
Schenectady, N.Y.	22		2	75				
Fitchburg, Mass.	18	3 × 6	1		6		1	
Superior, Wis.	20	2 × 10	2	300				
Rockford, Ill.	14	2 × 7	2	3 ⁽⁶⁾				
Taunton, Mass.	24	3 × 8	1	none	8	1 × 8	1	none
Canton, O.	9	6 + 3	2	?				
Butte, Mont.	16	2 × 8	2	300				
Montgomery, Ala.	15	12 + 3	2					
Auburn, N.Y.	10	1 × 10	2	none				
East St. Louis, Ill.	14	2 × 7	2	3 ⁽⁶⁾				
Joliet, Ill.	14	2 × 7	2	3 ⁽⁶⁾				
Sacramento, Cal.	9	1 × 9	4	250				
Racine, Wis.	14	2 × 7	2	none				
LaCrosse, Wis.	10	1 × 20	4	none				
Williamsport, Pa.	26	2 × 13	2		13		4	
Jacksonville, Fla.	18	2 × 9	2	2 ⁽⁶⁾				
Newcastle, Pa.	14	2 × 7			7			
Newport, Ky.	12		2	3 ⁽⁶⁾	5	A. L.	2	3 ⁽⁶⁾
Oshkosh, Wis.	26	2 × 13	2	none				
Woonsocket, R.I.	15	3 × 5	1	100	5	1 × 5	1	150

STATISTICS OF AMERICAN CITY COUNCILS. (*Continued.*)

	SINGLE OR LARGER HOUSE				SMALLER HOUSE			
	NO. OF MEM-BERS	HOW CHOSEN (1)	TERM	SALARY (2)	NO. OF MEM-BERS	HOW CHOSEN (1)	TERM	SALARY (2)
Pueblo, Colo.	8	1 × 8	2	\$390				
Atlantic City, N.J.								
Passaic, N.J.	13		3					
Bay City, Mich.	22	2 × 11	2	2 ⁽⁶⁾				
Fort Worth, Tex.	9	1 × 9	2	96				
Lexington, Ky.	12		2	3 ⁽⁶⁾	8	A. L.	2	\$3 ⁽⁶⁾
Gloucester, Mass.	24	3 × 8	1	none	8	1 × 8	1	none
South Omaha, Neb.	6		2	600				
New Britain, Conn.	24		2	none	6	A. L.	2	none
Council Bluffs, Ia.	8	6 + 2	2	250				
Cedar Rapids, Ia.	10	8 + 2	2	100				
Easton, Pa.	24	2 × 12	2		12	1 × 12	4	
Jackson, Mich.	16	2 × 8	2	75				

¹ The multiplication sign (×) indicates election by wards or districts, the first figure showing the number of members from each district (n indicating a variable number), and the second figure showing the number of districts.

The plus sign (+) indicates election partly by districts and partly at large. The figure given first shows the number of members elected by wards; the second figure shows the number elected at large.

A. L. indicates election at large, on a general ticket for the whole city without ward or district members.

² Annual salary is given except where otherwise noted.

³ No city council.

⁴ A small property qualification is required of electors for the city council.

⁵ Members of two administrative boards act jointly as the city council.

⁶ Per meeting.

THE REPEAL OF THE STAMP ACT.

THE passage of the Stamp Act by the British Parliament, on March 4, 1765, was but a part of the policy inaugurated by the Grenville ministry of raising a revenue from the colonies. This the prime minister, George Grenville, proposed to accomplish in three ways: first, by the renewal of old and the imposition of new duties; secondly, by the prevention of smuggling, and the enforcement of the Acts of Trade, thus greatly increasing the customs dues; thirdly, by an internal tax on all legal and commercial papers. The revenue thus raised was to be used for the maintenance of a standing army in America, to protect the territory acquired in the war with France. This expense was felt to be more than the taxpayers of England, already heavily burdened, could bear. The first two of these measures were, in spite of a certain amount of grumbling by the colonists, successfully enforced, but the failure of the attempt to levy an internal colonial tax is well known. Indeed the Stamp Act had barely been put in force when it was repealed, for although the bill was passed in March, 1765, it did not take effect until November 1, and was repealed on March 20 of the following year.

For this sudden change of policy four reasons may be given: first, the change of ministry; secondly, the influence in Parliament of several important men, as, for example, Pitt, Lord Camden, Burke, and Benjamin Franklin; thirdly, the resistance of the colonists to the act; and fourthly, the protests of the merchants and traders of England.

I. *The change of ministry.* — The fall of the Grenville ministry, which occurred in May, 1764, was by no means an unexpected event. Grenville had always been personally obnoxious to George III, who was continually intriguing with Pitt to form a new ministry. The king was also influenced against his minister by his Scotch favourite, Lord Bute, who had been disappointed in his expectation of finding in Grenville a convenient tool. But the

immediate cause of Grenville's fall was his bungling of the Regency Bill in his attempt to prevent the princess dowager's becoming regent. This change of ministry had an important influence upon the repeal of the Stamp Act. With Grenville in power, the repeal might never have taken place, for later in Parliament he advocated the enforcement of the act even by arms.

The new ministry was composed largely of the "New Whigs," with the Marquis of Rockingham at its head, and General Conway as one of the secretaries of state. Although by no means brilliant or homogeneous, it certainly stood for broader ideas of personal liberty and for a more liberal trade policy. Grenville's administration had undoubtedly been characterized, as Walpole says, by "arbitrary measures," as for instance the famous General Warrants Bill. After his fall, the raising of a revenue was no longer the chief aim, nor did the Navigation Acts continue to be the "idol" of the ministers. A new spirit of conciliation is seen in the colonial despatches of Secretary Conway, in which the governors are advised to endeavour "by lenient and persuasive methods . . . to restore peace and tranquillity."¹ But unfortunately, as Mr. Whatley wrote to Grenville, the ministers "are undetermined about the measures to be taken . . . if the tumult continues."² They were, in fact, in a most difficult position. They hesitated to repeal the act, as the abandonment of a tax because of opposition to it would be a dangerous precedent, and the abandonment of this tax would seem a denial of a prerogative of Parliament — the right to legislate for the colonies. On the other hand, they feared that its enforcement would mean the continuation of anarchy in America and great commercial and financial loss to England. Even when the disorders in America had convinced the ministry of the impossibility of an enforcement of the act, they were not unanimous. The question then arose: Shall the act be totally repealed or merely modified in its most objectionable points? The result of these conflicting considerations was an unfortunate hesitation. The Parliament did not assemble until December 17, and it separated for the Christmas recess without transacting any business, except issuing writs to fill up

¹ Colonial Pamphlets, 1762-1765.

² Grenville Papers, iii, 100

vacancies. Even during this interval "the ministry found no regular or consistent plan of operation and mutual support."¹

When at last the ministry did decide upon a total and immediate repeal it had to make head, as Dr. McGuffin, an American, wrote to another American, "against a sea of hindrances and opposition from many quarters felt known and unseen."² It had to face not only open opposition in Parliament but the secret opposition of the king and his party.

And lest mankind [writes Horace Walpole] should misapprehend the part the favourite intended to take on the Stamp Act, Lord Denbigh, his standard-bearer, and Augustus Hervey asked . . . leave to resign their places, as they purposed to vote against the repeal. The farce was carried on by the king . . . his Majesty told them, that they were at liberty to vote against him and keep their places. This was, in effect, ordering his servants to oppose his ministers.³

Besides "the king's friends," the Bedford and Grenville factions opposed the repeal and were for taking "violent measures,"⁴ as Lord Chesterfield wrote to his son. The ministry, however, maintained with firmness its decision to secure a total repeal and not a modification of the act, and this in its turn modified the "violent measures" of the opposition. The latter, abandoning a futile attempt to obtain the enforcement of the act as it stood, now advocated its modification and then its strict enforcement in its modified form. Thus George Grenville, the leader of the opposition in the lower house, moved on January 5, that the words "explain and amend" be substituted for "repeal";⁵ while the Duke of Bedford, an opposition leader in the House of Lords, about the same time informed the king that

should his Majesty be inclined to pursue the modification, instead of the total repeal of the Stamp Act which his ministers intend to propose to Parliament, the Duke of Bedford will be happy to receive his Majesty's commands for attending him.⁶

¹ Parliamentary History, xvi, 90, 91, foot-note.

² Grenville Papers, iii, 237.

³ Walpole Memoirs, ii, 183.

⁴ Parliamentary History, xvi, 89.

⁵ Memoirs of Rockingham, i, 275.

⁶ Bedford, Correspondence, edited by Lord John Russel, iii, 329, foot-note.

This is an excellent example of the intrigues against which the ministry had to contend.

II. *The support of the repeal by influential men in Parliament.*

— While the new ministry had to face a powerful opposition, it found on the other hand an unexpected ally in Mr. Pitt, and an unlooked-for strength in its follower, Edmund Burke. Mr. Pitt's attitude towards the act had not hitherto been known, and so far the ministry had looked in vain to him for support and advice. Now, however, he came forward as the strongest champion for repeal, and a most important one, as he was the popular hero of the day, and his name, as Walpole says, made "a sort of party."¹ Burke was at this time almost unknown, and the influence he exerted for the repeal was merely that of eloquence, but eloquence great enough to receive the praise of Pitt² and an "address of thanks" from seventy-seven merchants.³ Probably equal in influence to the support of Pitt was the testimony of Benjamin Franklin. His examination in the House of Commons doubtless dispelled many popular illusions regarding the colonies, as for instance their fabulous wealth, and gave convincing proof of their determination to resist the act to the bitter end. It gave the house the rare but exceedingly valuable opportunity of viewing their own colonial legislation from the American standpoint. The support of Lord Camden in the House of Lords was probably not unexpected, since he owed his seat to the Rockingham ministry; but it was very valuable, as he was one of the foremost lawyers of his day, and exceedingly popular because of his acquittal of Wilkes, while he was chief justice. The importance of his able advocacy of the repeal in the upper house becomes apparent when one remembers that Lord Mansfield, who had hitherto monopolized the leadership of that house, spoke against the bill.

What, however, were the considerations that constrained a vacillating ministry to propose to Parliament the repeal of the Stamp Act? These were undoubtedly the opposition of the colonists and the protests of the British merchants.

¹ Walpole, Letters to Sir Horace Mann, i, 277.

² Parliamentary History, xvi, 108, foot-note.

³ Correspondence of Burke, edited by Fitzwilliam, i, 194.

III. *The opposition in America.* — Before the passage of the Stamp Act in March, 1765, the grievances of the colonists were mainly economic, and the full significance of such a measure as the proposed act does not seem to have been generally realized until the autumn of 1764. In April, 1764, the Grenville ministry had passed an act imposing heavy duties on foreign sugar, wine, coffee, silk, and other goods imported into the colonies. These were the chief articles of colonial commerce, and the requirement that the duties should be paid in bullion made the burden heavier, as money was extremely scarce in the colonies. Besides this, the famous Molasses Act of George II, which had placed almost prohibitory duties on foreign rum and molasses, was made perpetual. This act had been passed to force New England to abandon her trade with the prosperous French and Dutch West Indies, and to bring her lumber and horses to the thriftless English West Indies alone. The strict enforcement of this act would have deprived New England to a great extent of its most lucrative trade, and of its one source of bullion with which to pay for English manufactured goods; fortunately the act had remained mere paper legislation. But now the rates were so lowered as to transform an almost prohibitory duty into one for revenue, and the law was rigidly enforced by the officers of the British ships stationed along the coast. This brought especial distress upon New England, but the new duties affected all the colonies in a greater or less degree.

These new duties were commonly considered as taxes, and the distinction between internal and external taxation — later so strongly emphasized — was not yet generally made. Proof of this is found in the instructions of the colonial agents, and in the petitions and resolutions of the colonial assemblies. For instance, Hutchinson, the historian of New England, would seem to imply that before the passage of the act of 1764 the Massachusetts assembly drew a distinction between a duty imposed for mere trade regulation and one for revenue, and regarded the latter as a tax. According to his account, the proposition of the Massachusetts agent Bollan, that the colony should apply for a reduction of the sugar duty, was rejected by the assembly because "it was not advisable to apply for the reduction of the duty in order to the

payment of it, but rather that the act . . . should be revived as a prohibition."¹ Moreover, when in January, 1764, this same assembly drew up a protest against the proposed renewal of the Sugar Act, "in which the authority of Parliament to impose the duty was not denied," "the opposers of the address in the house laboured for the assertion of an exclusive right to impose taxes and duties on inhabitants in all cases whatsoever."² Likewise, the town of Boston in the instructions to its representatives, in May of that year, acknowledged its submission to all just and necessary regulations of trade; but, on the other hand, it declared: "There is no room for delay . . . These unexpected proceedings may be preparatory to more extensive taxation; for if our trade may be taxed, why not our lands and everything we possess?"³ Again in the next month, in the instructions drawn up by the Massachusetts assembly, under the guidance of Otis, for their London agent, the question is raised:

Can it be possible that duties and taxes shall be assessed without the voice or consent of an American parliament? . . . Prohibitions of trade are neither equitable nor just, but the power of taxing is the great barrier of British liberty.

Here again the distinction that is drawn is between duties imposed for trade regulation and those imposed for revenue. Resolutions were also adopted by this same assembly, protesting against "the Imposition of Duties and Taxes by the Parliament of Great Britain, upon a people who are not represented in the House of Commons."⁴ It likewise sent circular letters to the other colonial assemblies asking their coöperation to "obtain a Repeal of the Sugar Acts and . . . to prevent a Stamp Act"⁵ — making no difference between the two.

In the Rhode Island assembly also no distinction between the two forms of taxation seems to have been made: in its instructions to the committee appointed to confer with the other colonies,

¹ Hutchinson, *History of Massachusetts Bay Colony*, i, 108, 109.

² *Ibid.*, i, 114, 115.

³ *Ibid.*, i, 107.

⁴ *Ibid.*, i, 112.

⁵ *Proceedings in Parliament and in Massachusetts* (pamphlets published, 1774),

p 5.

Votes of the Assembly of Pennsylvania, 1758-1767, p. 355.

the Sugar and Duty Acts and the proposed Stamp Act are grouped together without any discrimination.¹ In October of that same year, the New York assembly sent the following manifesto to the House of Lords:

The authority of the parliament of Great Britain to model the trade of the whole empire, so as to subserve the interest of her own, we are ready to recognize . . . ; but the freedom to drive all kinds of traffic, in subordination to and not inconsistent with the British trade, and an exemption from all duties in such a course of commerce, is humbly claimed by the colonies as the most essential of all the rights to which they are entitled. . . . For, since all impositions, whether they be internal taxes, or duties paid for what we consume, equally diminish the estates upon which they are charged, what avails it to any people by which of them they are impoverished?²

In that same month the North Carolina assembly stated in its address to the governor: "We observe our commerce . . . burthened with new taxes . . . against what we esteem our inherent right and exclusive privilege of imposing our own taxes."³

Not only the resolutions of the assemblies, but also the writings of the prominent politicians and statesmen show that until the autumn of 1764 the distinction between the two forms of taxation was not commonly made. For example, Governor Bernard, in that summer, in his scheme of American polity, declared that Parliament's power both to impose port duties and to levy internal taxes was not to be disputed.⁴ James Otis, in his attack on Bernard's scheme, agreed with him that "There is no foundation for distinction between external and internal taxes; if parliament may tax our trade, they may lay stamps, land-taxes, tithes and so on indefinitely."⁵ This opinion was reiterated by Thomas Hutchinson in a letter to the secretary of the chancellor of the Exchequer. "Nor are the privileges of the people," he wrote, "less affected by duties laid for the sake of the money arising from them than by an internal tax."⁶ Beside Otis, another emi-

¹ Colonial Records of Rhode Island, vi, 403.

² Bancroft, *History of the United States* (ed. of 1885), iii, 90.

³ Colonial Records of North Carolina, vi, 1261.

⁴ Bancroft, iii, 79.

⁵ *Ibid.*, iii, 82.

⁶ *Ibid.*, iii, 85.

nent young lawyer of Boston, Oxenbridge Thatcher, published in September a pamphlet, in which he declared that the late Duty Act imposed a "tax" upon the colonies without their consent.¹ That the word "duty" in these resolutions and pamphlets did not mean an internal tax, is shown by the testimony of Franklin before the House of Commons that "by taxes they [the colonists] mean internal taxes; by duties they mean customs."²

Although the colonists regarded these duties as taxes, they paid them without any great opposition, because the act of 1764 was, on the whole, in accord with the double fiscal system under which they had always labored. From the very beginning of their history, all forms of internal taxation were a part of their several departments of finance, while colonial trade regulations and customs dues were under the control of the British exchequer. When, however, in the autumn of 1764, "the centre of gravity shifted from the measure that had . . . to the measure that might become a law,"³ it was quite natural that they should consider the proposed Stamp Act a violation of the former financial policy. As a consequence, they began to distinguish consciously, as before they had distinguished unconsciously, between the two forms of taxation.

But even after the autumn of 1764 this distinction was not accepted by all the American colonists. James Otis, just before the passage of the Stamp Act, acknowledged that "no less certain is it that the Parliament of Great Britain has a just and equitable right . . . to impose taxes on the colonies, internal and external, on lands as well as on trade."⁴ Nor was any such distinction made in Dickinson's pamphlet, *The Late Regulations respecting the British Colonies*, printed in 1765, where the same argument was used against the Stamp Act and the Acts of Trade, viz. their economic effect.⁵ Even Franklin, who in his testimony before the House of Commons laid great emphasis upon the distinction,

¹ The Sentiments of a British American, in Palfrey, History of New England, v, 280.

² Parliamentary History, xvi, 159.

³ Tyler, History of the Literature of the Revolution, p. 61.

⁴ A Vindication of the British Colonies, p. 21.

⁵ Pennsylvania Historical Society Publications, xiii, p. 67.

seemed to admit, later, that precedents were against the Americans. In 1766, he wrote:

The Parliament, it is acknowledged, have made many oppressive laws relating to America, which have passed without opposition, partly through the inattention [of the colonists] to the full extent of their rights, while employed in labour to procure the necessaries of life. But that is a wicked guardian . . . who first takes advantage of weakness incident to minority . . . and, when the pupil comes of age, urges these very impositions as precedents to justify continuing them and adding others.¹

Strikingly similar is the statement of Richard Bland of Virginia in the same year:

But whether the Act of 25 Charles II, or any of the other acts, have been complained of as infringements of the rights of the colonies or not, is immaterial; for, if a man of superior strength takes my coat from me, that cannot give him a right to my cloak.²

Although opposition was expressed against the act of 1764, it was not until after the actual passage of the Stamp Act that breaches of the peace occurred. At the same time the tone of the assemblies became much bolder: the colonies of Virginia and Massachusetts passed their famous resolutions. Non-importation agreements were drawn up by the merchants of New York and Pennsylvania. Finally the culmination of legal resistance was reached in the Stamp Act Congress of October, 1765. But even during these days of excitement, when the words "right" and "privilege" were on every one's lips, the economic grievances were not entirely forgotten. Even in the resolutions of the Stamp Act Congress, the trade restrictions were placed among the complaints. Indeed, in the remonstrances and resolutions these restrictions were almost invariably placed side by side with the Stamp Act as a burden on the colonists, although not as one that so nearly touched their rights. Another proof of the influ-

¹ Observations on "A Letter from a Merchant to his Nephew in America." Works of Benjamin Franklin, edited by Jared Sparks, p. 238.

² An Enquiry into the Rights of the British Colonies, p. 19.

ence of the economic grievances is given in a letter of Mr. Whatley to Mr. Grenville, October 17, 1765. "The rage of the people," he writes, "seems not to be confined to the Stamp Act; the officers of the customs are also the object of it."¹ And in June, 1766, Secretary Richmond wrote to Governor Sharpe of Maryland, that not only had the repeal of the Stamp Act been granted to the colonists, but that also "those Grievances in Trade, which seemed to be the first and chief object of their uneasiness, have been taken into consideration."² So likewise the pamphlet *True Interest of America* stated: "Though the Stamp Duty has been the ostensible cause of the late riots, yet that in reality is but a small part of their grievances." A summary of these "grievances" was given by Franklin in his testimony before the House of Commons. The antagonism of the colonies to Parliament, he testified, was due

to a concurrence of causes: the restraints lately laid on their trade, by which the bringing in of foreign gold and silver into the colonies was prevented; the prohibition of making paper money among themselves; and then demanding a new and heavy tax by stamps; taking away, at the same time, trials by juries, and refusing to hear our humble petitions.³

The influence of one of these causes, "taking away trials by juries," has probably not been sufficiently emphasized. This privilege had been restricted by the Duty Act of 1764 and by the Stamp Act, as all cases arising under these acts were to be tried by the admiralty courts. The same was of course true of all breaches of the Acts of Trade. The colonists considered the extension of the powers of the admiralty courts as an "infringement of their natural rights as Englishmen," as early as they did parliamentary taxation. Proof of this is found as early as 1764, in the resolutions of the Massachusetts assembly,⁴ in a petition of Rhode Island to the king,⁵ and also in the writings of such men

¹ Grenville Papers, iii, 100. ² Correspondence of Governor Sharpe, iii, 312.

³ Parliamentary History, xvi, 141, 142.

⁴ Proceedings in Parliament and Massachusetts, p. 5.

⁵ Colonial Records of Rhode Island, vi, 415.

as Oxenbridge Thatcher,¹ Stephen Hopkins,² Daniel Dulany³ and Samuel Adams.⁴ Also in the resolutions regarding the Stamp Act Congress, in the following year, the legislatures of Maryland, Rhode Island and South Carolina stated this grievance as a violation of their rights. In the resolutions of the Stamp Act Congress the extension of the powers of the admiralty courts is pronounced as dangerous to their liberty as the tax itself. In the petitions also of this congress to the king and to the two houses of Parliament, the two "invaluable" and "essential" rights that they plead for are "the rights of taxing ourselves, and trial by our peers."⁵ But just as in the distinction between internal and external taxation, one can find an economic as well as a political cause for this devotion to trial by jury. Jury trial had been the chief method of obstructing any attempted enforcement of the Acts of Trade by English officials, for the juries had persistently brought in verdicts unfavorable to the king. One has only to read the reports of Edward Randolph to be convinced — even after allowance has been made for his prejudice — how jealously the jurors guarded the pockets of the colonists.

In last analysis, the fundamental cause of the revolt in America was the peace of 1763, which freed the colonies from all fear of a French invasion. As long as this danger existed, they felt their dependence upon the mother country, and consequently were forced to remain loyal and obedient. Now that the danger was removed, they no longer felt the need of assistance, especially as they were making great strides towards economic and commercial independence. As Franklin put it, America had grown out of its youth into its manhood. The saying of the Grenville party at this time, "obedience and protection are reciprocal," was true in more than one sense. Legally no possible fault can be found with the Stamp Act, but practically it proved a failure because it came too late. If it had been imposed ten years earlier its fate

¹ Tyler, *Literature of the American Revolution*, p. 54. ² *Ibid.*, pp. 63, 64.

³ *The Rights of the Colonists Examined*, pp. 101-104.

⁴ Charles Francis Adams, *Life and Works of John Adams*, i, 66, 67; iii, 466, 467.

⁵ *Authentick Account of the Proceedings of the Congress held at New York, 1765.*

would probably have been very different, and Grenville would have been saved a great deal of abuse.

There is ample proof that the revolt in America caused serious alarm in England. Mr. Whatley's statement regarding the Virginia resolutions is true of all the proceedings: "They are such," he wrote to Mr. Grenville, "as in my opinion cannot escape the notice of Parliament."¹ Indeed in the debates in Parliament the uneasiness aroused by the disturbed condition of the colonies is clearly shown.

IV. *The protests of the English merchants.* — The hostility of the British manufacturers, merchants and workmen and the decrease of British trade were probably even more influential in effecting the repeal than the disturbances in America. Among the laboring classes, at least, there was much restlessness. This was shown in the great opposition to the cider tax, and in the riot after the prohibition of Italian silks. The people were suffering from the heavy taxes and business depression resulting from the recent war. To this was now added the falling off of one of their most lucrative branches of trade, that with America; for the policy of Grenville reacted disastrously upon the mother country. In the trade between the colonies and England, the former had been forced to pay partly in bullion, as they imported more manufactured goods than they exported raw materials. They had hitherto been able to get this bullion from the foreign West Indies, for with these the balance of trade was in their favor. But now this source of supply was cut off by the strict enforcement of the Acts of Trade, while the money market was still further tightened by the paper money acts, and by the demand that the new duties should be paid in bullion. Having no money to pay for manufactured goods, and being already in debt to the English merchants, the colonists were forced to retrench expenses, and to use homespun and other home-made articles. This meant of course the loss of many customers to the British merchants and traders.

The passage of the Stamp Act greatly increased these evils, by causing the colonists to determine, as a matter of principle, not

¹ Grenville Papers, iii, 198.

as Oxenbridge Thatcher,¹ Stephen Hopkins,² Daniel Dulany³ and Samuel Adams.⁴ Also in the resolutions regarding the Stamp Act Congress, in the following year, the legislatures of Maryland, Rhode Island and South Carolina stated this grievance as a violation of their rights. In the resolutions of the Stamp Act Congress the extension of the powers of the admiralty courts is pronounced as dangerous to their liberty as the tax itself. In the petitions also of this congress to the king and to the two houses of Parliament, the two "invaluable" and "essential" rights that they plead for are "the rights of taxing ourselves, and trial by our peers."⁵ But just as in the distinction between internal and external taxation, one can find an economic as well as a political cause for this devotion to trial by jury. Jury trial had been the chief method of obstructing any attempted enforcement of the Acts of Trade by English officials, for the juries had persistently brought in verdicts unfavorable to the king. One has only to read the reports of Edward Randolph to be convinced — even after allowance has been made for his prejudice — how jealously the jurors guarded the pockets of the colonists.

In last analysis, the fundamental cause of the revolt in America was the peace of 1763, which freed the colonies from all fear of a French invasion. As long as this danger existed, they felt their dependence upon the mother country, and consequently were forced to remain loyal and obedient. Now that the danger was removed, they no longer felt the need of assistance, especially as they were making great strides towards economic and commercial independence. As Franklin put it, America had grown out of its youth into its manhood. The saying of the Grenville party at this time, "obedience and protection are reciprocal," was true in more than one sense. Legally no possible fault can be found with the Stamp Act, but practically it proved a failure because it came too late. If it had been imposed ten years earlier its fate

¹ Tyler, *Literature of the American Revolution*, p. 54. ² *Ibid.*, pp. 63, 64.

³ *The Rights of the Colonists Examined*, pp. 101-104.

⁴ Charles Francis Adams, *Life and Works of John Adams*, i, 66, 67; iii, 466, 467.

⁵ *Authentick Account of the Proceedings of the Congress held at New York, 1765.*

would probably have been very different, and Grenville would have been saved a great deal of abuse.

There is ample proof that the revolt in America caused serious alarm in England. Mr. Whatley's statement regarding the Virginia resolutions is true of all the proceedings: "They are such," he wrote to Mr. Grenville, "as in my opinion cannot escape the notice of Parliament."¹ Indeed in the debates in Parliament the uneasiness aroused by the disturbed condition of the colonies is clearly shown.

IV. *The protests of the English merchants.* — The hostility of the British manufacturers, merchants and workmen and the decrease of British trade were probably even more influential in effecting the repeal than the disturbances in America. Among the laboring classes, at least, there was much restlessness. This was shown in the great opposition to the cider tax, and in the riot after the prohibition of Italian silks. The people were suffering from the heavy taxes and business depression resulting from the recent war. To this was now added the falling off of one of their most lucrative branches of trade, that with America; for the policy of Grenville reacted disastrously upon the mother country. In the trade between the colonies and England, the former had been forced to pay partly in bullion, as they imported more manufactured goods than they exported raw materials. They had hitherto been able to get this bullion from the foreign West Indies, for with these the balance of trade was in their favor. But now this source of supply was cut off by the strict enforcement of the Acts of Trade, while the money market was still further tightened by the paper money acts, and by the demand that the new duties should be paid in bullion. Having no money to pay for manufactured goods, and being already in debt to the English merchants, the colonists were forced to retrench expenses, and to use homespun and other home-made articles. This meant of course the loss of many customers to the British merchants and traders.

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⁴ Charles Francis Adams, *Life and Works of John Adams*, i, 66, 67; iii, 466, 467.

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tive of Parliament. According to the testimony of Mr. Trail, an American, the opinion of Mr. Conway was that "the Stamp Act must be repealed, that there was some difficulty about coming off with honour, and that America would boast that she had conquered Britain."¹ Rockingham told him that the repeal of the act was necessary because "of such confusions as would be caused by enforcing it."¹ The policy of the ministry therefore was to uphold the doctrine of parliamentary control, while repealing the obnoxious act itself — a plan which, according to Burke, "without giving up the British authority, quieted the empire."² "I assure you," Burke wrote to his constituents of Bristol, "that if ever one man lived, more zealous than another for the supremacy of Parliament, . . . it was myself."³ Thus, though Burke's speech was warmly commended by Pitt, the two were, as regards their principles, almost diametrically opposed. The one supported, the other opposed the Declaratory Act. The one was eminently practical in his arguments, and based his appeal on commercial policy; the other was strongly philosophic and theoretical, and founded his opinion on the natural and inalienable rights of man. "Mere speculation"⁴ was as abhorrent to Burke, as it was dear to the Great Commoner.

Unfortunately the speeches made by Burke in 1766 against the Stamp Act have not been recorded, but his position is clearly indicated in his "Speech on American Taxation," in which he reviewed the parliamentary debates and defended the Rockingham administration, with whose policy he declared himself to be completely in sympathy. This policy was a total repeal, based "on principles of policy, of equity and of commerce." It therefore "differed fundamentally" from the policies of both the opposition and of Pitt, but "preserved the object of both." The ministers "preserved the authority . . . the equity of Great Britain. They made the Declaratory Act, they repealed the Stamp Act."

Burke, unlike Pitt, made no distinction between internal and external taxes, but considered that the authority of Parliament

¹ *Life and Works of John Adams*, ii, 175.

² *Memoirs of the Marquis of Rockingham*, edited by Albemarle, i, 319.

³ *Burke, Correspondence*, edited by Fitzwilliam, i, 46.

⁴ *Ibid.*, i, 39.

extended over one as much as over the other. The Duty Act of 1764 and the Stamp Act of 1765 were therefore equally within the competence of Parliament, but they were equally inconsistent with the established commercial policy of the empire.

That policy was, from the beginning, purely commercial, and the commercial system was wholly restrictive. It was a system of a monopoly . . . from the year 1660 to . . . 1764. . . . I venture to say, that during the whole period, a parliamentary revenue from thence was never once in contemplation.

This monopoly he considered justifiable, because the colonies "were indemnified for it by a pecuniary compensation," as it was by means of British capital that "they were enabled to proceed with their fisheries, *etc.*" The act of 1764, however,

began the second period of the policy of this country with regard to the colonies; by which the scheme of a regular plantation parliamentary revenue was adopted . . . , a revenue not substituted in the place of, but superadded to, a monopoly. . . . Whether you were right or wrong in establishing the colonies on the principles of commercial monopoly, rather than on that of revenue, is at this day a problem of mere speculation. You cannot have both. To join together the restraints of an universal internal and external monopoly with an universal internal and external taxation, is . . . perfect uncompensated slavery.¹

Midway between Pitt and Burke, stood Benjamin Franklin. With Pitt and Camden, he defended the rights of the colonies, and claimed the same privileges and advanced practically the same arguments as they. With Pitt, he attacked the justice of the act, in that it laid a heavier burden upon the colonists than they could bear, and forced them to share the expenses of a war undertaken primarily for the preservation of the British Indian trade; a trade in which the Americans had no interest. Like Pitt, Franklin claimed that the colonists had already contributed their share of the expenses, in the part they had taken in the war. Franklin also maintained that the tax fell more heavily on the poor farmer than on the rich trader, but that in either case there

¹ Burke, *Speech on American Taxation*, 2d ed., printed in London, 1775, by J. Dodsley, pp. 38, 39, 41, 50, 51, 44, 66.

was not enough bullion to pay it. On the other hand, he laid stress upon the practical objections to the act. He showed how disastrous had been its effects upon trade, and he pointed out that America, through the non-importation agreements and the consequent impetus to her manufactures, was becoming every day more independent industrially. He also testified to the utter impossibility of ever collecting any internal tax, however small, "unless by force of arms."¹

Franklin made one assertion which was made by no Englishman, and which was rather startling in its significance. "The colonies," he asserted, "are not supposed to be within the realm."² Probably from policy the full meaning of this theory was not shown in his testimony before the House of Commons; but later in the same year, in his comments upon the minority report of the House of Lords, he denied the right of Parliament to tax the colonies, not only because they were not represented in that body, but also because they were entirely without its domain. To the king alone they were subordinate, both in questions of legislation and of taxation. He wrote:

I likewise protest . . . against your Declaratory Bill, that the Parliament of Great Britain has not, never had, and of right never can have, without consent . . . power to make laws of sufficient force to bind the subjects in America in any case whatever, and particularly in taxation, . . . as the Americans are without the realm. . . . Their only bond of union is the King . . . America is not part of the dominions of England, but of the King's dominions. England is a dominion itself and has no dominions.³

Somewhat the same idea is expressed in another pamphlet of this year, 1766. *An Enquiry into the Rights of the British Colonies* by Richard Bland.

It is evident [Bland declared] that the colonists . . . long before the first act of navigation . . . were respected as a distinct state, independent as to their internal government of the original kingdom, but

¹ Parliamentary History, xvi, 140.

² *Ibid.*, xvi, 156.

³ Letters and Miscellaneous Papers of Benjamin Franklin, edited by Jared Sparks, pp. 225, 231, 254.

united with her as to their external policy in the closest and most intimate League and Amity.

The author would here seem to imply that the relations between England and her colonies were those of two equal and independent countries, bound together by a friendly commercial treaty. "May not the king," Bland inquired, "have prerogatives which he has a right to exercise without the consent of Parliament?"¹ Could he not therefore grant colonial charters without Parliament's consent? Joseph Hawley, likewise, in the Massachusetts assembly of the same year declared: "The Parliament of Great Britain has no right to legislate for us."²

These extreme views were by no means generally accepted by the colonists at this time. All the other opinions of Franklin, however, were representative: his arguments were the arguments employed by his fellow-countrymen. Though they laid particular stress upon their rights, they did not neglect the practical side, nor fail to appeal to the self-interest of England by demonstrating the decrease in her American trade. As it was put in *An Essay on the Trade of the Northern Colonies with Great Britain*, the colonies can be made to yield the greatest commercial advantage to England by being permitted to acquire the greatest commercial prosperity for themselves. The essential condition of such prosperity is freedom.³ This was certainly in England the most influential of all their arguments. But it was their practical demonstrations rather than their theoretical writings, that had weight. The most convincing arguments were their refusal to use the stamp paper, their mob violence, their non-importation agreements, their repudiation of English debts, and particularly the proof of their growing economic as well as political independence of the mother country.

In the British Parliament itself, it was the practical demonstration of the inexpediency of the act by Conway and Burke and not the assertion of the rights of the colonies by Pitt that won the day. As Governor Sharpe of Maryland wrote to Lord Baltimore: "I

¹ *An Enquiry into the Rights of the British Colonies*, pp. 16, 19.

² Hosmer, *Life of Samuel Adams*, p. 96.

³ Tyler, *History of the Literature of the Revolution*, p. 58.

find by several Letters . . . that it [the Stamp Act] is at length repealed, not on the principles contended for by the colonies but purely out of regard to the Commercial Interests of Great Britain."¹ Franklin likewise testified that if the act were repealed the colonists would probably think that this was done "from a conviction of its inexpediency."² That this was so is distinctly stated in the *Annual Register*.

Those who contended for the repeal were divided in opinion as to the right of taxation; the more numerous body, of whom were the ministry, insisted that the legislature of Great Britain had an undoubted right to tax the colonies, but relied on the inexpediency of the present tax. . . . Those who denied the right of taxation were not so numerous.³

Pitt's influence was indeed great, but it was rather among the masses of the people, not represented in Parliament, than in Parliament itself, where, according to Walpole, "his followers [were] exceeding few."⁴ His doctrines were not only rejected but were considered actually dangerous even by some supporters of the repeal. In Lord Hardwick's opinion, they were "absurd and pernicious."⁵ Moreover the almost unanimous passage of the Declaratory Act proves that Pitt's theories were not accepted, and that therefore his arguments could not have been the compelling motive for repeal. Indeed, according to Sir George Savile, "the Act would certainly not have been repealed if men's minds had not been in some measure satisfied with the Declaration of Rights."⁶

Outside of Parliament also, there seems to have been little doubt as to the right of Parliament to tax the colonies; all the British pamphlets take the legality of the act for granted. Even the two staunch supporters of the rights of the Americans, Pitt and Camden, did not despise using the argument of "inexpediency." "But, my lords," Lord Camden said in closing, "even supposing the Americans have no exclusive right to tax themselves, I maintain it would be good policy to give it them. . . .

¹ Correspondence of Governor Sharpe, iii, 304.

² Parliamentary History, xvi, 151.

³ Annual Register, 1766, 37.

⁴ Walpole, Letters to Sir Horace Mann, i, 277.

⁵ Memoirs of Rockingham, i, 277.

⁶ *Ibid.*, i, 305. See also Letter of Albemarle, *ibid.*, p. 285.

America feels she can do better without us than we without her."¹ "You could not subsist," declared Pitt, "and be a people with that defalcation of imports."²

The great argument for the repeal, therefore, was the inexpediency of the act, and its chief object the restoration of quiet and harmony in order that the colonial trade might be saved. This was the primary motive, and not the fear of the political independence of the colonies. This is proven by facts already noticed; the emphasis laid upon the effects of the act on trade both in the pamphlets, in the debates, and in the examination of Franklin; and secondly the great influence of the merchants in obtaining the repeal. For instance, according to Burke, "Barlow Trecothick, . . . a member for London and a merchant in the American trade" was "the principal instrument" in securing the repeal.³ "I perceive," wrote Governor Sharpe, "that the Commercial Interest of Great Britain, and not the claims or clamours of the colonies, has been urged as the sole or at least the most proper Reason to be given for the Repeal."⁴ Indeed the preamble of the repeal puts this beyond all doubt, by stating that "the continuance of the former acts would be attended with many inconveniences, and may be productive of consequences greatly detrimental to the commercial interests of these kingdoms."⁵ Thus "by relieving America," they aimed "to save the trade of Great Britain."⁶

But in spite of the strength of these arguments, the repeal bill was by no means rushed through Parliament as the act itself had been. On the contrary it met an able resistance. Burke characterized it as "one of the ablest, and . . . not the most scrupulous oppositions that perhaps ever was in the House."⁷ George Grenville exerted all his forces to save his "darling act," as Walpole terms it; and two strong leaders were secured by the opposition in the upper house in Lord Chancellor Northington and Lord Mansfield. In the House of Lords the opposition was especially strong because of the combined efforts of the Bedford and

¹ Parliamentary History, xvi, 170.

² Walpole Memoirs, ii, 217.

³ Memoirs of Rockingham, i, p. 319.

⁴ Correspondence of Governor Sharpe, iii, 306. ⁵ Annual Register, 1766, 194.

⁶ Chatham Correspondence, ii, 375, Geo. Onslow to Pitt.

⁷ Burke, Speech on American Taxation, 2d ed., p. 62.

Temple factions and of "the king's friends." Consequently on both the second and third readings of the bill, minority reports were drawn up by the Lords.

In the opposition the chief advocate of the rights of Parliament was Lord Mansfield. "It is out of the question," he declared, "whether it is or is not expedient to repeal this act. . . . The law is made, and the question is, whether you had a right to make it." He did not base his argument upon any theory of "virtual representation," for such representation he did not claim even for Englishmen at home. In his opinion, "the notion now taken up, that every subject must be represented by deputy, if he does not vote in parliament himself, is merely ideal." Representation by election first arose merely "by the favour of the crown." "As to the sound," he continued, "which has been thrown out, that no money can be raised without consent, the direct contrary is the truth; for if any number of people should agree to raise money for the King, it is unconstitutional." Consent is unnecessary, he maintained, because the British Parliament does not represent Englishmen as individuals, but

the whole British empire, and has authority to bind every part and every subject without the least distinction, whether such subjects have a right to vote or not, or whether the law binds places within the realm or without.¹

This legislative power of the British Parliament precluded any exclusive right of taxation by the colonies. And, as Soame Jenyns wrote, no charter²

ever pretended to grant such a privilege to any colony in America, and had they granted it, it could have had no force, . . . their charter being derived from the crown, and no charter from the crown can possibly supersede the right of the whole legislature.³

The distinction between external and internal taxes was likewise declared fallacious by Lord Mansfield,⁴ and indeed by all the

¹ Parliamentary History, xvi, 172-174.

² The Maryland charter was overlooked; *cf. supra*, p. 266, v. 4.

³ The Objections to the Taxation of Our American Colonies, p. 9.

⁴ Parliamentary History, xvi, 101, 176.

members of the opposition. Lord Temple especially "was Jo-cose upon the distinction of an Internal Taxation: what, says he, whilst the Stamp Act operates upon the Merchant shall we call it a Commercial Regulation, when upon the Law a Legal Regulation, and so on" ¹ It was moreover stated with some truth by Lord Lyttleton that "the Americans themselves make no distinction between external and internal taxes." ²

Other members of the opposition, maintaining the theory which Lord Mansfield rejected, argued that Parliament had the right to tax the colonies, because the colonies were "virtually" represented in Parliament, as were the non-voters of England.

There can be no doubt but that the inhabitants of the colonies are as much represented in parliament as the greatest part of the people of England are, among nine millions of whom there are eight who have no votes in electing members of parliament. . . . A member of parliament chosen for any borough represents not only the constituents and inhabitants of that particular place, but he represents . . . the commons of the land, and the inhabitants of all the colonies and dominions of Great Britain, and is in duty . . . bound to take care of their interests. ³

All the British pamphleteers advanced this new theory of universal as opposed to local representation, and derived from it the virtual representation of the colonists. ⁴

Having thus established the legality of the Stamp Act, the opposition, in the second place, defended its justice. "Ungrateful people of America!" exclaimed Mr. Grenville: "Bounties have been extended to them . . . while you yourselves were loaded with an enormous debt." ⁵ The war, it was argued, had been undertaken primarily for the defence of the colonies, and they had profited the most by its results. It was therefore but just that they should at least bear the expense of their own army, es-

¹ Hammersly to Sharpe, in *Correspondence of Governor Sharpe*, iii, 27.

² *Parliamentary History*, xvi, 167.

³ *Ibid.*, xvi, 201.

⁴ See Soame Jenyns, *The Objections to the Taxation of Our American Colonies*, pp. 4, 5; A Letter from a Gentleman at Halifax, Tyler, *op. cit.* p. 71; Letters from a Merchant in London, Private Letters and MSS. Papers of Franklin, ed. by Sparks, p. 240.

⁵ *Parliamentary History*, xvi, 102.

pecially as England was heavily burdened with debt, while they were almost entirely free from debt. "Protection and obedience are reciprocal" was their answer to "no taxation without representation." A parliamentary tax, it was asserted, was the only method of obtaining the necessary aid. Soame Jenyns asked, with good cause:

Have their Assemblies shown so much Obedience to the Orders of the Crown that we could reasonably expect that they would immediately tax themselves on the arbitrary command of a minister? . . . and should we not receive Votes, Speeches . . . Petitions . . . in abundance, instead of Taxes? ¹

In the third place, the opposition took up the question of the expediency of the enforcement of the act, though, as the *Annual Register* stated: "So many instances of the inexpediency of the Stamp duty had already occurred, that the question was scarcely controvertible."² However, they maintained that the abrogation of this important right of Parliament would in the end have more disastrous results than the present financial loss. The repeal would stamp with approval the revolt and treasonable utterances in the colonies, and encourage them to repudiate all the acts of Parliament, particularly those relating to trade. As William Knox, the ex-agent for Georgia, put it, the result of the repeal in the colonies would be "addresses of thanks and measures of rebellion."³ Moreover they declared that the enforcement of the act had by no means been proved impossible, as no vigorous or prompt measures had been taken by the ministry. Undoubtedly it had been a mistake to give the colonies, in 1764, a year's warning in which to consider encroachments. But the responsibility for this error rested with the Grenville and not the Rockingham ministry, though, on the other hand, it must be acknowledged that Grenville's motive, in so doing, was of the best. He wished to give the colonies time to consider the matter, and to suggest another tax if this one was displeasing to them.

However, the arguments advanced against the repeal, and even

¹ The Objections to the Taxation of Our American Colonies, pp. 13, 14

² Annual Register, 1766, p. 44.

³ New York Colonial Manuscripts, Brodhead, vii, p. 803, foot-note.

the royal opposition, did not prevent its passage in the lower house, February 24, by a vote of 275 to 167. It was then carried to the House of Lords by over two hundred members of the lower house. "An instance of such a number going up with a single bill, has not been known in the memory of the oldest man." But as we have seen, in spite "of the *éclat* with which it was introduced into the upper house," the bill met with "a strong opposition there." Finally it passed its third reading, March 17, by a majority of 34, and three days after it received the royal assent. "An event that caused more universal joy throughout the British dominions, than perhaps any other that can be remembered."¹ The repeal was accompanied by the Declaratory Act,

which in the preamble reflects on the American provincial legislatures for assuming, against law, the exclusive right of imposing taxes upon his Majesty's subjects in the colonies, and declares the Americans subordinate to . . . the crown and parliament of Great Britain.²

However, Benjamin Franklin prophesied truly before the House of Commons that "the resolutions of right will give them [the colonies] very little concern, if they are never attempted to be carried into practice."³ The repeal was received in America with universal rejoicing. The attitude of the colonists seems to have been eminently practical.

From first to last the issue seems to have been economic, and the act was apparently proposed, passed, resisted, and repealed on commercial and economic grounds. Political theories were invoked, at every stage, in support of the conflicting economic interests, but none of these theories exercised decisive influence. The act was passed, not primarily to establish a closer connection between the mother country and her colonies, but to get a colonial revenue. It was resisted, not because of any theory of representation, but because the colonists were now economically strong enough to protest. It was repealed because their resistance affected disastrously the British colonial trade.

BRYN MAWR COLLEGE.

HELEN HENRY HODGE.

¹ Annual Register, 1766, pp. 72, 46, 77.

² McPherson, Annals of Commerce, iii, 443. ³ Parliamentary History, xvi, 145.

THE MONARCHOMACHS.

THEORIES OF POPULAR SOVEREIGNTY IN THE SIXTEENTH CENTURY.

WHEN in 1564 Calvin, the last of the quartette of great Reformers which included Luther, Zwingli and Melancthon, passed away, the conditions and influences were clearly discernible which were to give character to the dramatic history of Western Europe during the next half-century — the period of widespread civil and international warfare in which difference in religious creed marked the line of division between the combatants. Philip II, well settled as successor of Charles V in Spain and the Netherlands, was manifesting his purpose to rule as absolute sovereign throughout all his possessions and to crush Protestantism wherever it existed. In England, France and Scotland three women, despite John Knox's frantic demonstration of the iniquity of such a thing,¹ held the reins of political power — Elizabeth, persecuting Calvinists as well as Catholics, yet already the mainstay of Protestantism against Philip; Catherine de' Medici, Catholic if anything by conviction, but wholly Machiavellian in her employment of religion to aid her in wielding the authority which rested nominally in her weak and incapable son, Charles IX; and finally, Mary, Queen of Scots, a passionate French girl, struggling by girlish methods — with "owlings and tears," as John Knox described it — to assert for herself some small measure of the rights of a sovereign against the violent nobles and the grim Presbyterians who denied to her either political or religious independence.

In Spain and in England there was no civil war during the period we are considering. Philip and Elizabeth alike knew how to assert and enhance a monarchic authority that should be secure against resistance. Absolutism in each case rested upon national feeling: the Spaniards submitted to Philip through pride in the greatness of his power, and the English supported Eliza-

¹ See his First Blast of the Trumpet against the Monstrous Regiment of Women.

both through fear of this same power. Autocracy was an undisputed fact in both countries, and by virtue of this condition, amid all the literary activity that characterized the period, political theory, as is usual in a time of absolutism, received practically no attention in England and Spain.¹ Quite different was the case in France, Scotland and the Netherlands. In each of these lands civil war was chronic during the last half of the sixteenth century, and from each arose striking contributions to political philosophy.

Though these wars were rather more political than religious in origin, they became in their development distinctly affairs of creed, and in each case the result turned upon the demarcation between Protestant and Catholic. Thus before the end of the sixteenth century the teachings of Luther and Calvin, despite the pacific leanings of the Reformers themselves, had by force of circumstances become a decisive factor in the political transformations of the chief powers of Europe. Protestantism in consequence assumed a militant aspect, and out of the turmoil developed theories of Christian duty in the state that bore little resemblance to the ancient ideals of passive obedience to established authority. To explain the proceedings and the triumphs of the French, the Scottish and the Dutch Calvinists, a thorough and aggressive overhauling of political dogma was required, and to some of the chief works by which this was effected our attention will now be directed.

The Vindiciæ contra Tyrannos.

The controversial literature which was produced in France by the religious wars included many violent anti-monarchic works by Catholic as well as by Protestant writers. The latter found their chief inspiration in the affair of St. Bartholomew's, the former in the abandonment of the League and the assassination of the Guises by Henry III. So far, however, as philosophical foundation and general principles were concerned, the Catholic and the Protestant debaters were substantially on common ground. Both alike justified resistance to a French king on the general principle that under certain circumstances a king became a tyrant

¹ Mariana, whose work is considered below, wrote just at the end of the reign of Philip II; and moreover, Mariana's work was conspicuously exceptional. For jurisprudence, however, this period was most glorious in Spain.

and hence an outlaw, and on the particular principle that under the French constitution the monarch was subject to pretty well-defined limitations. Among the earliest and most influential demonstrations of both these principles were the two Huguenot works: *Franco-Gallia*, by the distinguished jurist Francis Hotoman, and *Vindiciæ contra Tyrannos*, published under the pseudonym of Stephanus Junius Brutus, and written probably by either Hubert Languet or Duplessis-Mornay. To these works, and especially the latter, our attention may be confined.¹

The *Franco-Gallia*, published in 1574,² limited itself practically to the demonstration that France was never, in its constitutional origins, an absolute monarchy, but that, on the contrary, a general assembly of the nation had exercised the highest political powers throughout the early history of the Franks and during the Merovingian, the Carolingian and later periods. Hotoman's historical erudition was very great, and he massed with powerful effect the quotations that he gathered from the ancient chronicles to show that kings were chosen and deposed, legislation was enacted, and all the most important political business was transacted in the annual public council of the Franco-Gallican state. But the work did not go into the field of general political theory and affected the development of that system of thought only by suggesting and illustrating the applicability of the historical method to the questions at issue.

Of an entirely different character was the *Vindiciæ contra Tyrannos*, or *The Grounds of Rights against Tyrants*.³ This embodied a most comprehensive treatment of the foundation of monarchic authority, and presented from the Protestant point of view a doctrine which radically transformed the attitude that had been taken under the instruction of the leading Reformers. The work is systematic as well as comprehensive, and the style exhibits that

¹ Prominent among the Catholic anti-monarchic works in France were: Boucher, *De iusta Henrici III abdicacione*; Rossæus, *De iusta reipublicæ Christianæ in reges impios et hæreticos auctoritate*. See Janet, *Histoire de la science politique*, vol. ii, pp. 82 *et seq.*; Treumann, *Die Monarchomachen*; Hallam, *Literature of Europe*, vol. ii, ch. iv.

² I have used an English translation published in London, 1738.

³ Published in Latin in numerous editions. I have used that of 1595, annexed to a Latin version of Machiavelli's *Prince*.

same glowing quality which marked the expression in St. Bernard, some centuries earlier, of the best traits of the Gallic temperament through the medium of the Latin language exquisitely handled.

The *Vindicie* answers four questions, of which the first is: Whether subjects are bound to obey a prince who enjoins what is contrary to the law of God? To this a negative answer is obvious, based on the positive injunction of the Scriptures, on the incidents of the procedure through which Saul was set up as king over Israel, and, incidentally, on the analogy of the feudal relationship, under which a vassal is bound to obey the superior rather than the inferior lord in case their commands are in conflict.¹ This answer is no different from that which had been given by Luther and Calvin.

The second question is not of the right to disobey, but of the right to resist: Whether it is lawful, and if so, to whom, in what manner, and to what extent, to resist a prince who is violating the law of God and laying waste the church?² The answer to this question presents formally and completely the theory of contract as determining the reciprocal rights and duties of God, king and people, and presents the theory in such form as to exhibit perfectly the two sources of this celebrated doctrine of politics — Old Testament history and the Roman law.

It is assumed at the outset, in the long familiar manner, that the relation of God to the people of Israel must be accepted as the type of his relation to every Christian people. But the controlling principle in the Old Dispensation was covenant or contract (*foedus*). God chose Israel as his peculiar people and they on their part agreed to maintain his exclusive worship.³ When royalty was set up this covenant was confirmed and renewed. On

¹ "Reges omnes Dei vassallos esse, omnino statuendum est . . . Si Deus est domini superioris loco, rex vassalli, quis non domino potius quam vassallo obediendum pronunciet? Si Deus hoc præcipit, rex contra, quis regi adversus Deum obsequium denegantem rebellem iudicet? . . . ergo non modo non tenemur obedire regi, contra legem Dei quid imperanti, verum etiam si obediamus, rebelles sumus."

² "An liceat resistere principi legem Dei violanti et ecclesiam Dei vastandi: quibus, quomodo et quatenus?"

³ This contract was made by Israel at Ebal and Gerizim. Deut. xi, 29 and xxvii *et seq.*; Joshua, xxiv.

this occasion the installation of monarchy involved two distinct contracts.¹ The first was that in which God, on the one hand, and the people and king on the other, engaged to maintain the ancient relation of the chosen people, as the church of God; the second was that to which the king and the people were the parties, the former agreeing to rule justly and the latter to obey him. It is under the first of these two contracts that the right of resistance to an impious prince is manifest. King and people are co-contractors to maintain the worship of God; each, therefore, is responsible for the fulfillment of the obligation, and each is authorized to restrain the other from violating it, since the innocent party would participate in the penalty for such violation. The author of the *Vindiciæ* elucidates the situation by copious references to the Roman law, and feels no incongruity in construing the relation of man to his Creator in terms of the rules of the market-place.² In the Old Testament history abundant instances are found in which the kings enforced upon the people conformity to their pledge to maintain the worship of God, and quite as many, on the other hand, in which the people constrained the kings to keep the covenant, or deposed them for the failure to do so.

But the right of the people thus demonstrated, to resist a king who is deviating from his duty to God, is not to be recognized as pertaining to the masses in general. Action can be taken only by the magistrates or the assemblies in whom the power of the

¹ II Kings, xi; II Chron. xxiii.

² The contract, he explains, is like that in which a creditor is secured by the joint and several obligations of two or more debtors. "Videtur Deus fecisse quod in dubiis nominibus creditores facere solent, ut plures in eandem summam obligentur." The fact that the people is a party to the covenant is evidence that the people is not regarded by God as in that servile condition to which the courtiers assign it; for according to the Digest a slave is incapable of contracting. But perhaps the most interesting instance of the author's preoccupation with the Roman law is to be found in his comments on the death of Saul. The king's destruction is explained, of course, as the penalty of his failure to keep the covenant with God. But why, the author asks, was his army, *i.e.* the people, also destroyed? It must have been because of their joint responsibility with him. For God would not avenge the sins of a king on his people, or of a father on the son. "Acerbum est, aiunt iurisconsulti, parentis scelera filiorum poenis lui. Alieni sceleris quemquam poenas pati iura non sinunt." That is, the author, in following he *iurisconsulti*, forgets God's own words, "visiting the iniquity of the fathers upon the children unto the third and fourth generation."

people is organized. The multitude as a whole, "that monster with countless heads," is incapable of action; but in every well-organized realm there are princes, peers, patricians, nobles, *etc.*, normally constituting an assembly whose function is to see to the safety of the state and the church. Private citizens have no right of resistance save in support of the magnates, or by virtue of a special mandate from God.¹ The maintenance of religion, thus, is assigned to the estates of the realm, and the reference that the author makes to the deeds and doctrines of Constance and Basel indicates with sufficient clearness both the source and the conservative character of his theory.

The third question propounded in the *Vindiciæ* concerns the right of resistance on other than religious grounds: Whether and to what extent it is lawful to resist a prince who is oppressing and destroying the state?² The answer embodies a complete and systematic demonstration of popular sovereignty by divine right. Royalty, the argument runs, is merely an institution of convenience for the benefit of the people. God sanctions it to this end. A king never reigns in his own right; he is chosen by God and is installed by the consent of the people.³ The history of the Israelites, of the ancient Greeks and Romans and of the French monarchy is shown to establish this principle. "No one is born a king; no king can exist *per se* or can reign without a people. But on the contrary, a people can exist *per se* and is prior to the king in time." Even where, as in France, the kingship is hereditary, the fundamental fact is that the choice of a king is voluntarily limited by the people to a single family.⁴ That the essential function of royalty is to provide for the welfare of the people, is obvious from the nature of things. It is clear at the outset that men who are by nature free, impatient of subjection and born rather to com-

¹ But the claim to a special mandate must be most carefully established in order to justify action by a private citizen: "*privatos ni extra ordinem ad id munus vocatos evidenter appareat, suapte auctoritate arma se capere nullo jure posse.*"

² "*An et quatenus principi rempublicam aut opprimenti aut peridenti resistere liceat? Item quibus id et quomodo et quo iure permissum sit?*"

³ The whole argument consists in a formal proof that "*electionem regis tribui Deo, constitutionem populo.*"

⁴ "*Qui vero ex ea stirpe proximi sunt non tam reges nascuntur quam fiunt; non tam reges quam regum candidati habentur.*"

mand than to obey, have not deliberately chosen submission to another and renounced the law of their very nature, as it were, except for the sake of some great advantage.¹ Taking from Seneca the conception of a primeval "golden age," in which government was unnecessary and no one would have had a crown if he could have picked it up in the street, the author ascribes the origin of royalty to the necessity for leadership that arose when private property began to be recognized.² Monarchs were appointed to determine rights at home and to lead armies abroad; but they always remained subject, in their powers and actions, to the end for which they were created. Such being the original character of royalty, it is easy for the author to prove, as he does at length in most eloquent fashion, that the sweeping claims of power made by courtiers (*aulici nostri*) on behalf of kings, especially in reference to property and taxation, are baseless.³

The true principle on which to explain the whole relation of king to people is that of the second contract already referred to. This is entered upon between the king, on the one side, and the magnates, representing the whole people, on the other. The form is that of the Roman *stipulatio*, and the people has the part of *stipulator*, which, the author observes, is at law the more advantageous. The people asks of the king whether he will reign justly and according to law; he answers that he will. Thereupon the people pledges itself to yield faithful obedience so long as he keeps his promise. Thus the king contracts absolutely, the people conditionally; hence, the failure of the king to fulfill his undertaking frees the people *ipso iure* from their obligation. This compact completes the relationship which is inchoate in the first compact of king and people with God.

¹ "Primum sane palam est, homines natura liberos, servitutis impatientes, et ad imperandum magis quam ad parendum natos, non nisi magnæ cuiusdam utilitatis causa imperium alienum ultro elegisse, et suæ quasi naturæ legi, ut alienam ferrent, renunciassent."

² "Cum igitur *Meum* illud et *Tuum* orbem invasissent ac de rerum dominio inter cives, mox vero de finibus inter finitimos, bella exorirentur . . . reges creati sunt ut domi ius dicerent, foris vero exercitum ducerent."

³ "Statuamus tandem oportet reges patrimonii regii non proprietarios, non fructuarios, sed administratores tantum esse. Cumque ita sit, multo sane minus aut rerum privatarum cuiusque aut rerum publicarum quæ ad singula municipia pertinent proprietatem usumfructumve sibi tribuere posse."

In the first covenant or pact piety comes under the bond; in the second, justice. In the one the king promises dutifully to obey God; in the second, justly to rule the people; in the one, to provide for the glory of God, in the other, to maintain the welfare of the people. In the first the condition is, if you observe my law; in the second, if you secure to each his own. Failure to fulfill the first pact is punishable immediately by God; failure to fulfill the second, legitimately by the whole people, or by the magnates of the realm (*regni proceres*), who have undertaken to watch over the whole people.

That such is the true foundation of all royal governments is evident, the author holds, from the coronation pledges and oaths that have appeared throughout history;¹ but even without these, it would be manifest from nature itself. Hence the definition of tyranny is easy: the tyrant is he who willfully disregards or violates the contract through which alone monarchic dominion is legitimate. The usurper, or tyrant *absque titulo*, is an outlaw, and resistance to him is the right of every one, even the private citizen, under natural law, under the law of nations and under civil law. As to the tyrant *exercitio*, that is, the lawful king who becomes unjust and oppressive, the representatives of the people, having assured themselves that his offenses are not due to ignorance, unintentional error or mere incompetence, but are willful and deliberate, must constrain and, if necessary, depose him. Such is their duty; they stand toward the king in the position of co-guardian (*contutor*), to see that he does not violate his obligation to his ward (*pupillus*) the people.² The council of the realm is in the state what the general council is in the church; and as it has been universally admitted that the general council may depose a pope, even though he claims to be king of kings, with how much better warrant may the council of the realm depose a monarch. But private citizens cannot act in this matter. Resistance to the tyrant *exercitio* is the right only of the whole people,

¹ He dwells with special unction on the famous formula employed by the Justicia of Aragon in the installation of the king: "We, who are as good as you and are more powerful than you, choose you as king," etc.

² Here the author's anxiety to fortify his doctrine with legal principles leads to a change of base; there is a considerable difference between a *stipulator* and a *contutor*.

with whom, as contrasted with individuals, the governmental compact is made; and the *populus universus* is represented in the one function as in the other by the great council of the magnates.

The fourth question debated in the *Vindiciæ* is: Whether it is the right and duty of princes to interfere in behalf of neighboring peoples who are oppressed on account of adherence to the true religion, or by any obvious tyranny? ¹ The answer is affirmative on both branches of the question, and the ground is, in the one case the unity of the Christian church, in the other the unity of humanity, involving respectively duty to God and duty to one's neighbor. As the preceding questions are designed to justify the resistance of the Huguenots to Charles IX and Henry III, so this is designed to justify the action of Elizabeth of England and some of the Protestant princes of Germany in extending aid to the struggling Huguenots. And as the doctrine of popular sovereignty is the outcome of the one undertaking, so an enlightened view of international solidarity is strongly presented in the other.

George Buchanan.

The chief contribution to political theory which was due primarily to the Scottish Reformation was Buchanan's work *On the Law of the Realm among the Scots*,² published in 1579. John Knox's literary productions were multifarious and influential but they embodied no systematic treatment of politics. Buchanan, however, in the monograph named, undertook a scientific apology for the anti-monarchic proceedings of recent times, especially in Scotland, and dedicated the work, with grim Presbyterian satisfaction, to his royal ward, the young James VI. The central point of the whole subject, Buchanan assumed, was the distinction between king and tyrant, and the elaboration of this distinction is the general theme of the work.³ In literary form as well as in content the monograph reflects very faithfully the humanistic erudition of which the author was so famous a master.

¹ "An iure possint aut debeant vicini principes auxilium ferre aliorum principum subditis, religionis purae causa afflictis aut manifesta tyrannide oppressis?"

² De iure regni apud Scotos. Appended to his *Rerum Scoticarum historia*, Aberdeen, 1762.

³ Cf. secs. 6 and 7.

Society and government originate, Buchanan holds, in the effort of men to escape from the primordial state of nature, when, as Polybius had described it, they lived the bestial life, without law and without fixed abodes.¹ The impulse to social life came partly from the sense of self-interest,² but rather more fundamentally from the instinct of association implanted by nature, or, better, by God. In society thus constituted the attribute essential to continuous existence is justice, as in the physical man it is health. The function of the king, therefore, is to maintain justice; and Buchanan throughout his work recurs again and again to the Platonic analogy of the true ruler and the skilled physician. But experience teaches men that justice is to be maintained rather by laws than by kings; hence it is that the rulers, originally unlimited in power, have with the development of enlightenment been always subject to law.³ The maker of the law is the people, acting through a council of representatives chosen from all classes, and the interpreter of the law should be, not the king, but a body of independent judges. Nor is the king even to fill the gaps which are bound to appear in the law from time to time. His function in relation to the law is reduced to the minimum; and yet, Buchanan holds, his task is a most substantial and difficult one, — namely, to maintain the general *morale* of the state by setting to the citizens a high example of rational and virtuous living.⁴

Having evolved this rather vague and visionary concept of the king, the author bodies forth the figure of the tyrant, whose characteristics are expressed with all the rhetorical frenzy that classical literature has rendered conventional.⁵ Essentially, however, the tyrant is a monarch who either has obtained his power without the consent of the people, or has exercised it otherwise than in

¹ . . . "tempus quoddam cum homines in tuguriis atque etiam antris habitarent ac sine legibus, sine certis sedibus palantes vagarentur." Sec. 8.

² He notes very acutely the danger of considering self-interest as the essential principle of social unity; for it may be adapted as well to the dissolution as to the consolidation of a community. Cf. sec. 9.

³ "Regum insolentia legum fecit desiderium."

⁴ Sec. 39.

⁵ Cf. the description of the tyrant's life, with "horror," "metus," "faces Furiarum," "bellum," and all the rest of the familiar accompaniments.

conformity to justice. In the former case he is a mere outlaw, an enemy of the race and at the mercy of every one; in the latter case he is by the nature of the office, as set forth above, liable to the people for violation of the law, which is the expression of justice as conceived by the given society. Buchanan controverts, with great skill and precision, the arguments drawn from the Scriptures for passive obedience to tyrants. St. Paul's injunction of submission to the higher powers is subjected to an especially careful interpretation, the substance of which is that the apostle was addressing those who were, like the Anabaptists, tending to disregard all social and political institutions, and that the command, therefore, referred to authority in general and not to the persons who at any time exercised the authority.¹ In view of this construction of the injunction to obedience, together with the express command of the Lord that the wicked be cut off and removed out of the midst of the people, Buchanan's conclusion is that a tyrant may be slain with impunity.²

The whole basis of the relation between king and people, particularly in the Scottish realm, is summed up, Buchanan holds, in the terms of a contract. A hereditary right to exercise royal power has been granted by the people, but it is not in human nature that such power be given and obedience pledged without some consideration,³ and the consideration in this case is the promise to conform to justice and law in the exercise of the power. Violation of the terms of the pact by either party dissolves the bond and releases the other party from further obligations. But the king whose conduct has such an effect and who thus promotes the destruction of human society becomes a tyrant and an enemy of the people, and is therefore the object of a just war; and when such a war has once begun, it is lawful not only for the people as a whole but even for individuals to slay the enemy.

¹ Secs. 60-70. Paul, he says, wrote just what would be written now to the Christians living under the rule of the Turks — to submit to overwhelming force in the interest of peace, though without any implication that the Turkish power is in the true sense legitimate. Sec. 70.

² Secs. 53-56, 86.

³ "Habet humanus animus sublime quiddam et generosum natura insitum ut nemini parere velit nisi utiliter imperanti; neque quicquam est valentius ad continendam humanam societatem quam beneficiorum vicissitudo." Sec. 55.

Tyrannicide, thus, is in last resort a just device for maintaining the reign of law among a people. But before this last stage is reached there must be some way in which the people can proceed in seeking to confine the king to legal paths. Who shall call him to judgment? Buchanan's answer¹ to this crucial question lacks altogether the degree of clearness attained in the *Vindiciæ*. It must be, he says, the whole people, who alone are above the law. But what if there be, as is always the case, a difference of opinion among the people? Then the majority must decide. But what if the majority, from timidity or negligence or venality, stand by the king? Then they must be considered bad citizens, and the decision must be made by the good citizens, who will always be on the side of liberty and decency.

This very impotent conclusion exhibits the bankruptcy of his whole theory, as a practical scheme for judging institutions. The final judgment on the ultimate issue in the state is to rest with the "good" citizens; but there is no criterion for determining who are "good" citizens except that they decide this issue in a certain way. Buchanan indeed concedes the bankruptcy of his theory by the remark: "But even if the whole people (*tota plebs*) should dissent from proceeding against the king, this has nothing to do with our discussion; for we are inquiring not what will happen, but what can justly happen."

Johannes Althusius.

The systematic political doctrine which embodies most distinctly the influence of conditions in the Netherlands at the end of the sixteenth century is that of Althusius, the German jurist. This philosopher was forty-four years (1604-38) chief magistrate of Emden, an imperial city on the frontier of the new Dutch Republic, and in both practical activity and doctrinal conviction he manifested the fullest sympathy with the religious and political ideals of the people who were just freeing themselves from Spain. His work on political theory, *Systematic Politics*, illus-

¹ Secs. 76-80.

trated by examples from *Sacred and Profane History*,¹ was published in its complete form in 1610, when the familiarity with the situation in the Netherlands had produced its fullest effect on the writer's mind.²

The salient features of Althusius's system are (1) exhaustive analysis and application of the contract theory in the explanation of social and political organization; (2) a clear and precise conception of sovereignty; (3) the ascription of sovereignty exclusively and immovably to the people; and (4) a conception of "people" which is incompatible with any idea of a "state" except that of a confederacy of lesser organized units.

Every species of associated life (*consociatio*) among human beings has its foundation, Althusius holds, in an agreement or contract to which the individuals are parties, and involves (1) a body of rules in accordance with which this society is to be conducted and (2) a relationship of command and obedience among the members for the administration of these rules. Human society in its most general aspect consists of a vast series of associations, rising with increasing degrees of complexity from the family, through the corporation, the commune, the province, to a climax in the state. These various species of social organization, with all their infinite sub-classes, are most diverse in their purposes, but all alike have the characteristic stated above: in each the given end conditions the administration of its affairs, and the essence of the corporate life inheres in the contract by which the individual members unite for the achievement of that end. Of the public associations, families unite to form communities, *viz.*, villages, counties, towns, cities;³ these unite to form provinces; and the

¹ *Politica methodice digesta, exemplis sacris et profanis illustrata*. For the account of Althusius's life I have followed implicitly the exhaustive monograph of Gierke: *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien*, Breslau, 1880. And because I have been unable to procure a copy of Althusius's work, I have also followed Gierke's analysis of its contents. There is a useful analysis also in Bluntschli, *Geschichte der neueren Staatswissenschaft*, pp. 77 *et seq.*

² The work was dedicated to the Estates of Friesland, one of the United Provinces, and in the preface the revolt from Spain is glorified as a realization of the theory of the work.

³ *Vici, pagi, oppida* and *civitates* are various forms of the lower political corporations.

latter in turn unite with the cities or one another to form the highest type, the state (*politia, imperium, regnum, populus, res-publica*). The state he defines as a general public association in which a number of cities and provinces, combining their possessions and their activities, contract to establish, maintain and defend the rights of the realm.¹ From this it follows — and Althusius emphasizes the point again and again — that the members of the state are not at all the individuals who reside within its limits, but the lesser corporations (cities and provinces) through whose contractual union it comes into existence.

Sovereignty (*maiestas*) is defined as the supreme and supereminent power of doing what pertains to the spiritual and bodily welfare of the members of the state. This power inheres, by the very nature of the association, in the people — the totality, that is, of the members of the state. Not each member is sovereign, but the members as an aggregate. Like all the anti-monarchic writers, Althusius illustrates his theory by the dictum of the Digest: "What is owed to a corporation is not owed to its individual members";² and he ascribes sovereignty to the corporation, not to its members. But for the purpose of carrying out the functions of the state duties may be distributed among agents of the sovereign, and it is in this capacity alone that kings and magistrates exercise authority. These functionaries, whatever their power and jurisdiction in reference to the individuals, are by the very nature of the case themselves subject to the people as a whole. This appears not only from the nature of every association, in which the members unite for a certain end and necessarily retain control over the means to that end, but also from the nature of man himself; for all men being naturally free and equal, the exercise of authority by one over the rest must be based on the consent of the latter. Sovereign power, therefore, when properly understood, cannot conceivably be vested in any individual or group of individuals less than the whole people. It cannot be

¹ "Universalis publica consociatio, qua civitates et provinciæ plures ad ius regni mutua communicatione rerum et operarum, mutuis viribus et sumptibus habendum, constituendum, exercendum, et defendendum se obligant." Gierke, *op. cit.*, p. 25.

² "Quod universitati debetur singulis non debetur."

conferred upon any one by the people, for it is inextricably involved in the essential conditions of social life; so long as there is a people, it must possess sovereignty. The duty of every officer of the state, then, is to submit to and enforce the laws in which the will of the sovereign people is embodied.

The officials of a state fall into two classes: first, what Althusius calls the "ephors"; second, the "chief magistrate" (*summus magistratus*). Under the first head he includes all the various orders and estates in provinces and cities whose function it is to act as a restraint on the chief magistrate. These various bodies, or individuals endowed with similar powers, are representatives of the whole people and are the organs for the expression of the sovereign will. In default of action by them on any point their authority devolves for exercise upon the assembly of the whole people. Under "chief magistrate" Althusius sets forth his conception of royal authority. The king is the executive of the people, to secure their interest and safety by carrying out the laws. His relation to the people is that of agent (*mandatarius*), and a contract between him and the people is perfected through his choice and coronation. He undertakes to govern in conformity to the fundamental laws of the land, and they agree to obey him. But like the author of the *Vindiciæ*, Althusius assigns to the people the advantageous rôle of *stipulator*, and maintains that the obligation of the king is absolute while that of the people is only conditional.

From this conception of the relation between king and people the familiar conclusions as to the tyrant follow. Deliberate violation of the law or dereliction in his duty transforms the chief magistrate into the tyrant, releases the people from the pledge of obedience, and calls into action the right of resistance and deposition¹ which is dormant so long as the pact is observed. The exercise of this right in its completeness pertains, however, only to the people in their sovereign totality, acting through the ephors; private individuals may merely interpose a passive resistance to unlawful commands and defend themselves in case their natural rights are assailed. But while to the ephors, as a body repre-

¹ "Ius resistentiæ et exauctorationis."

senting the sovereign people, pertain the right and the duty of resisting, of expelling and of putting to death the tyrannical chief magistrate, to each member of the confederacy, acting through its particular ephors, belong the right and the duty, as an ultimate means of security against tyranny, of renouncing its connection with the rest and of associating itself with some other realm. A breach of the compact out of which the state arises, thus, justifies not only resistance but also secession; and Althusius regards this doctrine as a source of peculiar strength to the state, inasmuch as it provides an effective guarantee for the observance of the law of the land.¹

The most cursory view of the system of Althusius reveals that it is a generalization from the constitution of the decaying German Empire, with adaptations to the recent conditions in the Netherlands. Apart from the framework of his system outlined above, there is much of sound and suggestive political science in his work. As illustrations may be cited his treatment of the functions and the forms of government. The ends of the social organization being twofold, namely, the spiritual and the secular welfare of the members, the functions of the government are to correspond. First, it must supervise religion, worship, morals and education; second, it must prescribe general rules of social conduct, to be enforced by penalties, and in addition must carry on a wide range of concrete activities for the positive promotion of the general welfare, including supervision of trade, commerce, coinage, weights and measures, the administration of the public revenues and property, and the protection of the people from internal perils and external force. Althusius is a thorough Calvinist, and his scheme of governmental functions includes the maintenance of a state church, with a school system under its direction, and a far-reaching censorship of morals.

As to the forms of state, he rejects entirely the ancient classification and holds, logically enough, that since by the very nature of the state sovereignty must be in the people, there can be no more than one form of state. Government, however, may be monarchic or polyarchic, according as the chief magistrate is an

¹ Gierke, *op. cit.*, p. 35.

individual or an assembly. Yet, Althusius points out, it is scarcely conceivable that any purely monarchic or purely polyarchic government could exist; there will always be in a monarchy various councils and assemblies to share the responsibilities of the chief, just as there will always be in a polyarchy a concentration of functions in some individual for actual execution. Hence, he concludes, every government is normally a mixed form, and the names monarchy, aristocracy and democracy have real significance only as designating the most important element in each specific case.

Juan de Mariana.

While the bulk of the anti-monarchic doctrine of the period we are considering had its inspiration in the controversies between Protestant subjects and Catholic rulers, one very notable exposition of this doctrine was produced in a kingdom where the Catholic faith and royal absolutism had practically undisputed sway, and by an author who was identified with the society that most staunchly upheld the cause of the old worship against the Reformers. I refer to the work of the Spanish Jesuit, Juan de Mariana, entitled *On Kingship and the Education of a King*,¹ published in 1599 and dedicated to Philip III, of Spain. The extreme views embodied in this work as to the limitations upon royal power probably represent the influence of the extensive researches to which the author had long devoted himself in connection with his great *History of Spain*;² like Hotoman, in France, he had been impressed with the relatively large part played by the Estates in the growth of monarchy.

In developing his conception of the king, Mariana starts from the natural state of men, which he describes with some fullness on the general lines of Polybius's idea. In the beginning men lived like wild animals, following instinct in the procurement of food and the propagation of their kind, bound by no law and subject to no authority. The life had its advantages: nature furnished food and drink and shelter, through fruits and streams and caves;

¹ *De rege, et regis institutione*. I have used the edition of Mainz, 1605.

² *Historiæ de rebus Hispaniæ*, first published in 1592.

cheating, lying, avarice and ambition were unknown, and the cares of private property had not made their appearance; but, on the other hand, man's wants were greater and more varied than those of other animals and at the same time he was less adapted than they¹ to the protection of himself and his young from the dangers that incessantly arose from both animate and inanimate forces around him. It was to overcome these disadvantages that men grouped themselves together and submitted to the leadership of some one who displayed especial capacity in promoting their welfare. This was the origin of civil society, with all its blessings to the race. The timidity and weakness of men were the divinely implanted qualities through which the rights of humanity were to be developed.²

The earliest and natural form of government, thus, was the rule of one, recognized as the wisest and unrestrained by anything like law. But the restraints of law were soon imposed because, in the first place, the wisdom and impartiality of the monarch began to be questioned, and in the second place, the evil passions of men, growing stronger *pari passu* with the increase in knowledge, required some general system of restraint. Laws were at first probably very few and very simple; but with time they increased in number and complexity till now, Mariana mournfully observes, "we are as much burdened by laws as by vices."³ The existence of law, however, by the side of the personal ruler he regards as of the essence of government, and on this assumption he discusses the various forms of authority that have arisen among men since the first natural monarchy. Royalty is, on the whole, his preference. Democracy is plausible; but, he points out, fol-

¹ Mariana dwells especially on the helplessness of the human infant as compared with the young of other animals. *De rege*, bk. i, ch. i.

² "Sic ex multarum rerum indigentia, ex metu et conscientia fragilitatis, iura humanitatis (per quam homines sumus) et civilis societas, qua bene beateque vivitur, nata sunt. . . . Omnis hominis ratio ex eo maxime pendet, quod nudus fragilisque nascitur, quod alieno præsidio indiget atque alienis opibus adiuvari opus habet." *Ibid.* bk. i, ch. i.

³ "Illud etiam fit verisimile, leges initio paucissimas exstitisse easque paucis et apertis verbis nulla explicatione eguisse. Legum multitudinem tempus et malitia iniecit tantum ut iam non minus legibus quam vitiis laboremus." *Ibid.* bk. i, ch. ii.

lowing Pliny, wherever power is in a group of men, the less wise part will always prevail, "for the votes are not weighed but merely counted."¹ Monarchy restrained by law has less evils and greater efficiency than the other forms. It is likely, however, to degenerate into tyranny, which Mariana, following Aristotle, regards as consisting in monarchic rule exercised for the good of the ruler rather than the good of the subject. Against this species of government Mariana directs his celebrated and very radical theory of the right of tyrannicide, under which are included the less drastic forms of resistance.²

The broad grounds on which he bases the justification of resistance are, first, the sovereignty of the people, and second, the common sense of mankind, as exhibited in history. The royal power (*regia potestas*) has its source in a grant by the people (*respublica, populus*); but in making this grant of certain rights (*iura potestatis*) the people reserves to itself even greater rights, namely, those of taxation and legislation. The people is, in other words, above the monarch. Furthermore, the familiar examples of the deposition and execution of tyrants by peoples in all parts of the world tell plainly of the belief that has universally prevailed, and this universal belief is properly to be taken as the voice of nature in our souls.³ Hence the monarch who is clearly ruining the state is justly liable to removal by the people. Care must be taken in the process so that no greater disturbance than is necessary ensue. The assembly of the people must warn the offender to reform, and only upon his refusal must proceed to extremities. When, however, the people through its assembly has spoken, then, and not till then, may the private individual justly stay the tyrant. If, however, as is likely to be the case, the assembly is not permitted to meet or to act, the private citizen is justified in killing the tyrant at discretion.⁴

¹ . . . "in omni deliberatione pars sanior a peiori superabitur; neque enim suffragia ponderantur sed numerantur." *Ibid.* bk. i, ch. 2. Cf. Pliny, bk. ii, epist. 12.

² This is the content of book i, chapter 6: "An tyrannum opprimere fas est?"

³ "Et est communis sensus quasi quædam naturæ vox mentibus nostris indita, auribus insonans lex, qua turpi honestum secernimus."

⁴ But giving him poison to drink is an unchristian method of assassination. It makes the victim in a sense a suicide, and suicide is contrary to divine and nat-

Mariana is fully aware of the dangers that are latent in this doctrine. He concedes that it practically leaves to individual judgment the decision as to who shall be considered a tyrant and thus strikes at the root of all political authority. But still he considers the principle on the whole a useful one. Men are in general strongly disposed to submit to tyranny for the sake of quiet, and very few tyrants get their deserts; it is therefore a salutary restraint upon princes to inculcate the belief that the right to assassinate them if they become oppressive belongs to every one, and that the authority of the people is above their authority.¹

But the normal organization of monarchy includes an organ of the popular will in the Estates of the Realm — the bishops, nobles and representatives (*procuratores*) of the cities. This assembly is what Mariana calls the "state" (*respublica*) and the "people" (*populus*), and its superiority in power to the king is established in a full examination of the relative merits of absolute and limited monarchy.² The Estates are the formulator and guarantor of the fundamental law of the land, by which the monarch is circumscribed. In their control rest all matters of taxation, of succession to the throne, of the established religion of the state. The prince is in no sense *legibus solutus*; besides the restraint imposed by these fundamental laws, he is under a divine and natural obligation to submit to the will of God, and even to public opinion (*populari etiam civium opinione*). Mariana naturally dwells somewhat insistently on the supreme importance of the ecclesiastical element in the Estates and of ecclesiastical interests in the policy of the king; but his emphasis on these points is not stronger than that of the Protestant controversialists, while his general attitude toward absolutism is entirely in harmony with theirs. He mourns as sincerely over the decline of the Estates in Spain as Hotoman mourns over the like decline in France.

ural law. Mariana suggests however, that poison would be unobjectionable if it could be administered without the participation of the victim in the procedure, as, for example, if his clothing could be saturated with some deadly substance which would be absorbed through the skin. For this curious discussion see chapter vii: "An liceat tyrannum veneno occidere."

¹ "Quod caput est, sit principi persuasum totius reipublicæ maiorem quam ipsius unius auctoritatem esse." De rege, bk. i, ch. vi.

² Book i, chapter viii: "Reipublicæ an regis maior potestas sit?"

One book ¹ of the *De Rege* is devoted to a discussion of practical questions of policy and administration — of the aims and methods that should prevail in the royal activity. There is much sound judgment displayed in this discussion, and also at times something of that peculiar quality which gave Machiavelli a doubtful reputation. The question as to whether, in the choice of officers of the state, moral character should be a determining consideration, is answered affirmatively as to ecclesiastics and judges and negatively as to military and minor administrative positions. Admirable chapters on taxation and money respectively set forth sound principles of economics, and exhibit the disastrous effects of debasement of the coinage. Poor relief is treated at length, and the functions of the ecclesiastical institutions in the case of paupers are rationally defended. The “tramp” question even receives much attention ² — a fact which, taken in connection with the discussion of analogous questions, indicates that Spain was in a very demoralized condition from the social and economic point of view. Mariana’s discussion of military policy likewise suggests a consciousness of something wrong in Spanish affairs, possibly a reflection of the failures in the Netherlands and against England. Apart, however, from the particular references to Spanish affairs, his general doctrine is, like that of Machiavelli,³ that war is inevitable, that standing armies therefore are indispensable, and that the maintenance of domestic peace is conditioned on incessant warfare abroad. This, then, must be the royal policy. A just cause can generally be found, but whether it can be or not, keep the soldiers busy with incursions into foreign lands, with pillaging of unrighteous cities, with pure piracy and brigandage if necessary, and thus relieve the citizens of the burden of supporting them.⁴

¹ Book iii. The second book treats of the education of a prince.

² Book iii, chapter xiv.

³ Cf. Dunning, *Political Theories, Ancient and Mediæval*, p 321.

⁴ “Contendo pacem domesticam diu stare non posse nisi arma cum externis exercentur. Neque enim aut causa iusta deesse potest aut militum [milites ?] otio marcescere pati debemus; sed potius mari terraque prædas agere, in alienos fines irrupere, urbes præsertim impiorum diripiendas militi tradere.” Bk. iii, ch. v.

The Machiavellian spirit of which this doctrine is an example, is manifest also, though in a less brutal form, in the chapter on the wisdom (*prudentia*) of the king. The supreme art of royalty is to maintain the good will of the subjects.¹ Hope and fear are the chief means. Not so much actual rewards and punishments, but the expectation of them, is effective. If a subject seeks what it is wrong to give, do not deny him so flatly as to extinguish hope. Let no one leave the royal presence in sadness. Unpleasant duties must be left to subordinates; acts of grace should be performed by the king in person.² Let popular tumults be suppressed by the most ruthless officials, and then visit upon the latter the severest penalties for any dereliction on their part that can possibly be discovered; "thus all the wickedness will be punished and yet the people will remain well-disposed toward the prince." "Nothing," says Mariana, "is more effective with kings or subjects than self-interest, nor can there be any lasting compacts or friendships save where there is hope of some advantage."³ Disimulation, also, is indispensable to a monarch. Yet Mariana will not admit in principle the right of the king to lie or to deceive; only, he will get into serious difficulties unless he conceals his purposes and maintains a benignant aspect when conditions are most troublesome.⁴

These doctrines in the field of political ethics give a tone to Mariana's work that distinguishes it from those of the Protestant advocates of popular sovereignty whom we have considered. Calvinistic standards of morality were notoriously of a more rigid and austere type than those of the old creed, and Calvinistic theorists, whatever was true of their practice, in general clung pretty literally to the Decalogue in their code for kings. Mariana's teachings manifest a tendency toward that lax interpretation of

¹ "Debet rex, nisi id nomen exuat, volentibus imperare."

² Both Aristotle and Machiavelli had set forth this dictate of policy.

³ "Sit animo fixum, nulla re tum principes tum privatos moveri magis quam utilitate: neque ulla firma foedera putet, nullas amicitias, unde nihil speratur commodi." Bk. iii, ch. xv.

⁴ "Mentiri et fallere numquam principi concedam; sed nisi consilia tegere didicerit, omnibus etiam noxiis benignitatem ostentare, multis sæpe difficultatibus implicabitur." *Ibid.*

duty which came to be associated with the name of the society to which he belonged, the Jesuits.

General Influence of the Anti-Monarchic Theories.

The theories which have just been described injected into political philosophy and made the central topics of its discussions concepts which dominated the field until well into the nineteenth century. The state of nature, the contractual origin of society and government and the indefeasible sovereignty of the people became henceforth dogmas that might or might not be accepted, but could never be ignored by any serious thinker on politics. That these concepts were absolutely novel at this time is of course not true. The literature of antiquity abounds in allusions to the condition of man prior to any social life, and these allusions, brought prominently before the intellectual consciousness of the times through the revival of letters, contributed much to promote discussion of the state of nature. In like manner the idea of contract and consent as the basis of political authority owed its adoption not only to the close study of the ancient Jewish system which the Reformation had brought about, but also, as shown particularly in the *Vindiciæ contra Tyrannos* and in the writings of Althusius, by the adaptation to political debate of the doctrines of the Roman private law. The system of Marsiglio and Cusanus, which had been adopted freely by Luther and the other great Reformers in ecclesiastical polity, was as freely applied by their successors in political questions. In the spirit, if not in the precise words of Cusanus, it was laid down that since all men are by nature equal, the authority of any one over another must rest wholly on agreement and consent; and beyond where Cusanus had gone, the form and duration of this agreement and consent were deduced from the principles of commercial contract. Now for the first time explicitly and with elaboration the maxims of the Stoic jurists¹ of Rome were made the chief foundation of speculations about the state and government.

The religious wars at the end of the sixteenth century brought

¹ Cf. *Political Theories, Ancient and Mediæval*, pp. 128, 273 *et seq.*

fully into operation in secular politics the influences which were supreme in ecclesiastical politics at the beginning of the fifteenth century.¹ As Gerson and the conciliar party sought to destroy the autocracy of the pope and substitute the sovereignty of the General Council, so Languet and Buchanan and the rest sought to destroy the autocracy of the king and substitute the sovereignty of the Estates of the Realm. For in each of the theories described above, the "people" to whom sovereignty is ascribed is interpreted more or less precisely to mean the assembly of the magnates. As the conciliar party had consciously sought to establish a government by the great prelates, so the anti-monarchic party sought to establish a government by the secular nobles. In a large sense the theory of popular sovereignty at this time was not revolutionary, but reactionary; it presented the familiar phenomenon of a philosophy based upon a system of institutions that was passing away. For the practical demand of the assailants of monarchy was that the feudal aristocracy should resume the sway which the monarchs were taking from its hands. The "sovereignty of the people," as set forth especially by Althusius, was wholly opposed to the consolidation that was going on and that could be perfected only by the national monarchs. Hence the theories that we have been considering failed of realization in the principal kingdoms,² and the absolute monarchy continued its work. Only when a new content was put into the old formula of "popular sovereignty" was the dogma properly adaptable to revolutionary propaganda.

In many details of their theory the anti-monarchic writers that we have noticed differed from one another, and the shades of doctrine on a variety of subjects were manifold. But one feature stands out clear and conspicuous in all the theories, namely, the idea that political authority is derived by its possessor not from a divine but from a human source. The construction put by Luther and Calvin on the teachings of the Scriptures in this respect is dropped, and submission to any particular ruler as the representative of God's will ceases to be the presumptive duty of a Christian.

¹ *Political Theories, Ancient and Mediæval*, pp. 266 *et seq.*

² Scotland remained a constitutional kingdom and the United Netherlands an aristocratic republic, but France, Spain and England were absolute monarchies.

The law and the contract intervene between God and the monarch, and the royal acts are to be subjected to the test of mere human reason. On this ground the Protestants now unite with the Catholic followers of St. Thomas and deny to secular rulers that immediate divine right, and hence that ever extending power, which the early stages of the Reformation had tended to insure to them. Calvinists and Jesuits agree in at least the one contention, that despotism has no sanction from heaven.

But while this much of the anti-monarchic doctrine is clear, there is much vagueness and conflict in the treatment of many points of theoretical importance. "The people," which is at the basis of so much of their disputation, is a somewhat elusive concept. In one place the term signifies the classes which constitute the Estates of the Realm, in another the Estates as organized in their assembly, in another something which the Estates represent: but in no case will it be conceded that the population as a whole, conceived as a multitude of individuals, is to be recognized as an embodiment of political power. Again, in the idea of the contract, the parties are in every case assumed to be the people and the king; but only Althusius gives any adequate idea as to the process by which a people comes to exist.¹ The contract dealt with by all the rest is, in short, what has come to be called the civil or governmental contract, as distinct from the social contract. It was hardly strange that in the stress of controversy something less than exact theoretical analysis should have characterized the thinking of the earnest men who were in the heart of the fray. They sought and in a measure achieved certain concrete ends, but it was left for a series of thinkers who could bring more of philosophy and less of passion to the task, to formulate with precision the definitions and the dogmas which were of the highest significance in the political theory of the times.

WM. A. DUNNING.

¹ Mariana starts from the isolated man, but the steps by which a number of these become a people, capable of expressing a corporate will, are not indicated.

REVIEWS.

American Tariff Controversies in the Nineteenth Century. By EDWARD STANWOOD. Boston and New York, Houghton, Mifflin and Company, 1903. — Two vols., 410, 417 pp.

Mr. Stanwood's title does not accurately describe his book. He gives a history not so much of tariff controversies as of tariff legislation. In his introductory chapter, he tells the reader not to expect critical analysis of the writings of Carey, List, D. A. Wells, or Horace Greeley; and this we can readily dispense with. But there is also little attempt to follow the broad fluctuations in the state of public opinion on the controversy. We have, indeed, a great many pages giving abstracts of various speeches and documents. Hamilton's Report is summarised through twenty pages; the important parts of Walker's Report of 1846 are reprinted in full; and there are lengthy abstracts of the speeches of Clay, Webster and others on the tariff bills of 1820 and 1824. It is significant that the documents and debates of the period since the Civil War receive practically no attention from Mr. Stanwood. The reason may be that the vast bulk of the matter which is printed in the Congressional *Globe* and *Record* defied analysis or selection; but it may be suspected that our author concluded, as do most readers of the tariff speeches of later days, that these are chiefly buncombe for distribution among constituents, not expressions of any real conviction or matured opinion. Even for the earlier period there is little, beyond such summaries as have just been mentioned, on the shifts in the general debate on the tariff question. There is a long chapter on the constitutional question, in which Mr. Stanwood finds it not difficult to prove that Congress has the power to levy duties that protect. But in the main the volumes are confined to the legislative history of tariff bills and acts: to the votes and manœuvres in Congress, the connection with the general political situation, the intrigues and combinations that affected the various measures, and the parts played by the presidents, secretaries, chairmen of committees and other political leaders in shaping and enacting them.

This, his main task, Mr. Stanwood has done excellently. The narrative is full, accurate and fair-minded. Mr. Stanwood is a convinced protectionist, and from the outset frankly states his opinions. But this does not prevent him from pointing out with equal frankness how often the tariff question has been dealt with as part of the game of poli-

tics. The legislative history, not only of such tariffs as those of 1842 and 1846, but of the most recent acts — those of 1890, 1894, 1897 — is told in a manner to demonstrate how far removed we have been from any well-weighed or judicial course of procedure. The narrative of the three last-named acts is perhaps the best and most candid part of the book. The earlier tariff acts, especially those before 1860, have received their share of attention in the general histories; but on the McKinley act of 1890, the Wilson act of 1894, and the Dingley act of 1897, Mr. Stanwood had a free field, and his analysis of their curious congressional history is a contribution of real value. As regards the tariff legislation of the Civil War, he frankly explains that

whoever could devise or discover a new object of taxation, or who was courageous enough to advocate an increase of duty on any article already taxed, was regarded as a public benefactor, and the suggestion was adopted forthwith. As for the manufacturers, they had only to declare what rate of duty they deemed essential, and that rate was accorded to them.

The course of legislation in the period after the war is rightly described as "haphazard action, with no consistent plan," missing the opportunity to establish "a broad, comprehensive, far-seeing policy." It is to Mr. Stanwood's credit also that he speaks well of Democratic leaders, such as Mr. Cleveland and the late Mr. Wilson, whose principles he deems unsound. Mr. Cleveland receives deserved praise for his "splendid courage" in bringing the tariff issue to the fore in his message of 1887; and Mr. Wilson is described with no less generous recognition.

Mr. Stanwood, having given so much space to the history of legislation, has left himself very little for the discussion of the economic consequences of legislation. Indeed, his labor evidently has been put chiefly on the debates in Congress, and the materials closely connected with these. The economic history of the country, and that of the particular industries most affected by the tariff, receive scant attention. Clearly these are subjects much more important than legislative and political detail for reaching an opinion on the merits of the controversy; but they call for the examination of a huge mass of scattered and mostly unsatisfactory material. If we are ever to know all that can be known and is worth knowing on the economic effects of protection, there must be a great deal of preliminary monographic work. Mr. Stanwood's book adds nothing to our knowledge here, and indeed, hardly affects to do so. There are indeed some passages on the effect of this and that tariff act; and the tone of these passages is in general

reasonable and fair-minded. Thus Mr. Stanwood remarks, when beginning his discussion of the period since 1890, that "the importance of the tariff was grossly exaggerated by the disputants on both sides;" and, later, that "the act of 1897 did not make prosperity possible nor did it create prosperity" — a simple statement of obvious truth, but one which in these days it is refreshing to hear from a staunch protectionist. Mr. Stanwood adds that "undoubtedly it [the Dingley tariff act] added largely to the benefits the country would have enjoyed had the act of 1894 been undisturbed." But here the word "undoubtedly" only means that Mr. Stanwood has an *a priori* conviction that the beneficial effects must have ensued; whereas the free trader is no less convinced on his own general principles that harmful effects must have ensued; and neither, in the opinion of the present reviewer, can possibly prove his conclusion by evidence for the particular case.

Like most writers on the question, Mr. Stanwood is disposed to believe that a connection can be shown between tariff legislation and the periodic alternations of prosperity and depression; especially when a period of prosperity follows the kind of legislation he approves. He ascribes credit to the Dingley act for the revival of industry after 1897, though in the moderate terms just noted. So the prosperity of the period after 1828, though "not caused solely by the tariff," is held forth as a vindication of the wisdom of the high duties then enacted. For the act of 1842 much more is said. It was the *vera causa* of the good times that followed: "no other cause is assignable as having produced that effect." Of course this calls for some consideration of the contrary experience after 1846, when the lower tariff act was also followed by a period of prosperity. Here, however, Mr. Stanwood finds that other causes were at work, and attributes much effect to the Californian gold supplies. *Post hoc, propter hoc* is an extremely treacherous mode of reasoning in all economic discussion; and certainly its use is fallacious in ascribing bad and good times to low and high tariffs. The causes of these oscillations are deep-seated in the complex mechanism of modern industry. Some particular event, such as a tariff act, or a silver act, or (to cite a very modern instance) legal proceedings against a railroad combination, may give things a start up grade or down, and this is forthwith regarded by many people as the cause of prosperity or depression; though no cool-headed observer can help seeing that the effect was due mainly to the underlying industrial conditions. So far as protection and free trade are concerned, such discussion misses the point of the whole controversy. The real question at issue is one of production. Which mode of directing a country's

industry brings the largest measure of what Professor Marshall happily calls the national dividend? The regular flow of that dividend and, in some degree probably, its abundance are affected by the oscillations of trade. But the commanding factor in the long run is the effective organization and direction of the productive apparatus. Whether restraints on importation make that apparatus more effective or less is a question we can answer chiefly, if not solely, by general reasoning as to the working of the institution of private property and the effects of the geographical division of labor.

But all such discussion lies outside the scope of Mr. Stanwood's book, and what he says incidentally on the strictly economic problem is interesting chiefly as showing the point of view of an intelligent and fair-minded protectionist. One may differ with him on these matters, and yet be grateful for his narrative of the tortuous history of tariff legislation.

F. W. TAUSSIG.

HARVARD UNIVERSITY.

The Truth about the Trusts. By JOHN MOODY. New York, The Moody Publishing Company, 1904. — xxxii, 514 pp.

Mr. Moody believes thoroughly in the trust. It is, he says, "the natural outcome or evolution of societary conditions and ethical standards which are recognized and established among men to-day as being necessary elements in the development of civilization" (p. 494). Though the form of expression is vague we readily recognize in this sentence the familiar claim of the trust apologist: that given the existing social and industrial conditions, the progress of consolidation is inevitable. Mr. Moody's originality appears in the grounds he advances for regarding the trust as a beneficent institution. He casts aside the stock argument that the consolidation of industry results in higher wages and lower prices. He scorns the idea that the trust is not a monopoly. No brilliant career is open to the trust which has to rely upon mere competitive efficiency. Monopoly alone can explain the trust movement; the achievement of monopoly alone justifies it. But it is a huge mistake to regard monopoly as reprehensible — a mistake due wholly to the mischievous activity of the demagogue and the socialist. Monopoly is in reality "a social product which exists with the consent of society, and men in business take advantage of it where found, just as they take advantage of any other factor for achieving their end" (p. xvi). Men desire monopoly just as they desire lands or factories

or any other sources of income. It is a socialistic meddling with a man's natural rights to prevent him from satisfying so legitimate a desire. Moreover, "business could not be carried on under present high social conditions and ethical standards without at least a tacit recognition of the legitimacy of the monopoly factor" (p. 495). The relentless competitive warfare of the kind lauded by the Manchester school has disappeared before our higher ethical standards. Mr. Moody quotes approvingly from "the manager of one of our larger trusts":

Where formerly the small producer competed to reduce his costs and undersell his competitors by the ordinary means of great economy and superior efficiency, he has now gone beyond that point . . . The advantages he now seeks are not so crude. They consist in going to the root of things, in acquiring and dominating the sources of supply and raw material; in controlling shipping rights of way; in securing exclusive benefits, rebates on large shipments, beneficial legislation, *etc.* [p. xvii].

Mr. Moody admits that competition of this nature may oblige men sometimes "to break through the lines of abstract justice." "But where they do this," he adds optimistically, "it appears that society is apt to endorse these methods on the general ground that the end justifies the means." An excellent illustration of the methods referred to is found in his description of the copper trust. On page 34 we read that this trust attempted to elect to the supreme court of Montana a candidate who would be its tool in blackmailing litigation against its rival; that it tried to bribe the judiciary of the state, and endeavored to secure the impeachment of a judge whose decisions had been unfavorable to it. The end which it sought to attain is described on page 43 :

[The trust] aimed at *and saw the necessity for acquiring a monopoly of the copper production of the world;*¹ the purpose being to restrict the production to what might be the legitimate demand at about twenty-two cents per pound. [The normal price was about twelve cents.] Could the plan have been carried to success and a practical monopoly secured, instead of being criticized and condemned on every hand, the copper trust would, in the course of time (if not by this time), come to be looked upon as one of the most brilliant demonstrations of modern business mastery and success.

¹ The italics are the author's.

Unfortunately, our present "high ethical standards and social conditions" were not sufficiently exalted to permit of the attainment of this worthy end through such appropriate means. But the author suggests that we may yet hope for the realization of the copper trust dream, and in no very remote future.

To his views on the significance of the trust movement, Mr. Moody devotes comparatively few pages. The great bulk of the work consists of a collection of facts relating to the organization and history of existing trusts, with succinct analyses of their elements of strength or weakness. Part i of the work describes at considerable length the "Greater Industrial Trusts" — the copper, smelters', sugar, tobacco, shipping, oil and steel trusts. The material presented consists chiefly in excerpts from the best contemporary financial literature, and while its chief interest is for the investor, it contains much that is of importance for the economist and political scientist. The second part describes more briefly eighty-five of the lesser trusts. In part iii, entitled "Industrial Trusts in Process of Reorganization or Readjustment," we have a concise account of the disgraceful methods of finance employed in such concerns as the ship-building and the asphalt trusts. Parts iv and v are respectively devoted to a discussion of the franchise trusts and the more important railway groups. Part vi gives statistics for all trusts. The figures represent, as the author with apparent justice claims, "the most thorough and accurate list of industrial trusts ever published in this country."

Mr. Moody's point of view is consistently that of the securities market; and this fact explains both the excellence and the deficiencies of his work. He apparently lives in a world inhabited exclusively by promoters, underwriters, brokers and occasional investors; the last class being, however, of minor importance. Whatever promoters, underwriters and brokers desire, the author regards as their natural right; whatever furthers their interests makes for the general welfare. To strike at their privilege of exploiting the public is "to war against all mankind."

The data which Mr. Moody has collected, and which make up the bulk of his work, are of the greatest interest and importance to every student of the trust problem. The comparatively brief controversial portion of the book contains so much "truth about the trusts," and sets it forth so frankly, that his work may well be ranked among the most important contributions to the anti-trust literature.

ALVIN S. JOHNSON.

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Trust Finance. By E. S. MEADE. New York, D. Appleton and Company, 1903. — 387 pp.

Professor Meade's book is a distinctly valuable contribution to current knowledge, because it deals, in a practical way, with problems which happen to have been very lately projected into the foreground of controversy. The Supreme Court's Northern Securities decision of March 14 has revived, with particularly urgent emphasis, discussion of the "pool," the "holding company," the "promoter," and the trust as factors in the investment markets. Not only the general theory of railway and industrial combinations, but their *modus operandi*, their bearing on the money markets, the possibility of reconstructing them when they have been dismantled by statutes and decisions, are debated with varying conclusions. A very great deal of practical information and up-to-date exposition on the subject will be found in the book before us.

The situation which confronted many manufacturers in the free field of competition, five or six years ago, and which, taking advantage of the public's appetite for experiments in investment issues, resulted in the trusts of 1899, 1900, and 1901, is set forth with reasonable emphasis by Professor Meade. The movement was an evolution from the general understanding of a group of manufacturers to a "pool" with a heavy money penalty for violation of agreements, and from that to the "holding company." Professor Meade's book, having been published, not only before the Supreme Court's decision against the Northern Securities merger, but before even the St. Paul circuit court's decision on the same lines in April, 1903, naturally cannot bring this phase of the subject up to date.

It would, in fact, be impossible, even at the present time, to forecast with assurance the future of the trust in the form of the holding company. One prediction, popular at this moment among people observant of the course of events, is that the dissolution of the Northern merger will be followed by consolidation on a still more intimate basis. Others reason that the suit against the Northern Securities was provoked by the peculiarly flagrant effort of that merger to stifle competition, and that the decision will not necessarily apply to other holding companies. This second theory has been encouraged, not only by the singular division of the Supreme Court which left the balance of opinion in Justice Brewer's hands, with his plain intimation that other cases were not necessarily prejudged by this, but also by the attorney-general's more or less ambiguous statement that the prosecuting officers

of the government would not "run amuck." These facts encourage such holding companies as the Pennsylvania Company, owned by the railway of that name and formed in 1870 to buy stocks of other railways, and the Rock Island company, established in 1902 to control other railways and to diminish the risk of changes in existing ownership. These concerns have not challenged public scrutiny by any such frank avowal as that made by the Northern Securities Company, which compelled its counsel to admit, in reply to an inquiry from the court, that the merger scheme might be so extended as to control all the railways in the United States.

It is not yet clear, then, whether we are or are not to dispense with the company which merely holds the stock of competing corporations. A singular fact, to which Professor Meade does not draw attention, is that the holding company device, as actually applied, embodies two distinct and in some ways opposing theories. The purpose of the Northern Securities was admitted by Mr. Morgan, in open court, to be the establishment of a concern with capital so large that no one interest could acquire control. The Rock Island and Metropolitan Securities holding companies are as plainly recognized as contrivances whereby a small corporation, easily controlled by a single interest, may through its bond issues or lease agreements own other corporations two or three times greater than itself. But in each case, the purpose is avowed of establishing permanent control by existing interests. It is a pertinent question whether this purpose will not eventually invite the attacks of legislatures and courts, as effectively as the general purpose of monopoly.

Professor Meade addresses his inquiry more especially to industrial combinations, and, as he points out, the case of the United States *v.* E. C. Knight Company (sugar trust suit), decided in 1895, largely removed such companies from the scope of the Sherman act. The experiment with the modern industrial trust, immensely capitalized, is very thoroughly examined, and readers of the book will find much information and suggestion on the subject. The questions of watered stock, promoters' methods and profits, capitalization of earnings, and dividend policy, are discussed with as much completeness as was possible at the date of writing. Events since the publication of Professor Meade's book, however, have thrown very much new light upon the subject, and would probably have modified or amplified many of his opinions. This is particularly true of the questions of capitalization and dividends. The steel corporation, which capitalized the earnings of 1901 and paid out dividends on the apparent presumption that such

business which is necessary to the success of a business in all other similar circumstances. It is some money having been cut out of the net and the business is left with a smaller stock in working capital and therefore on the business stock point indeed not so successful. President Wilson thought he could not at the time demand it as a condition of sale of steel but very early realized the position which government business has shown it to be altogether sound. He immediately asked what has since resulted with the United States Steel Company. His answer is that "if the maximum earnings of an industrial company are fully capitalized, especially if the capitalization includes a large proportion of interest-bearing obligations, its financial standing is likely to be impaired by the first decline of prices." This is an important truth and has been finally established as such by the steel corporation's unhappy experience.

Much might have been added in the light of these subsequent events, to what President McKee wrote of working capital. This is the rock on which dozens of industrial combinations, not excepting the United States Steel, split last year. The principle may now be regarded as fully vindicated that an industrial trust cannot safely rely upon borrowing for such purposes. It must, so to speak, back its itself, have sufficient funds of its own in hand to purchase materials and pay wages, and must provide this first in organization, then by reserving cash from a yearly surplus. One question which can hardly yet be decided as settled is whether the dangers of open competition, to escape which the trusts were formed, have really been avoided. In the steel and iron trade, the steel trust's activities have resulted in an unheard-of increase of independent producing power, with a close approach already, on more than one occasion, to the open price-cutting of the old-time "trade wars."

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Die Florentiner Wollentuchindustrie vom vierzehnten bis zum sechszehnten Jahrhundert. Ein Beitrag zur Geschichte des modernen Kapitalismus. *Studien aus der Florentiner Wirtschaftsgeschichte*, Band I. By ALFRED DOREN. Stuttgart, 1901. J. G. Cotta'sche Buchhandlung Nachfolger. — xxii, 584 pp.

Doren's study of the Florentine woollen-cloth industry demands and has obtained recognition as an important contribution not only to Italian industrial history but to the wider subject of capitalistic development

in mediæval Europe. By skilful use of the abundant materials in the Florentine archives he has thrown new light on the inner working of the *Arte dell' lana*, the clothiers' gild which controlled the greatest Florentine industry during the fourteenth and fifteenth centuries. Doren's choice of theme is in line with his previous work, but though some of his earlier faults remain, his *Wollentuchindustrie* marks a decided advance in scholarly achievement. The rather flimsy *Kaufmannsgilden* of 1893 and the meagre *Florentiner Zünfte* of 1897 scarcely gave promise of the merits which must be conceded to this first instalment of his studies in Florentine economic history.

The most valuable part of the book is unquestionably the analysis of the internal organization of the woollen industry and the demonstration of the ascendancy of its capitalistic elements. The earlier chapters, dealing with the beginnings of the industry, the technique of manufacture, including the quality and provenance of the raw materials, and the final chapter with its somewhat premature summing up of results, though they contain numerous instructive items, are of less importance and may be briefly passed over. Doren's discussion of the obscure question as to the origin of capitalistic control is inadequate. For this, doubtless, the comparative silence of the earlier sources is largely responsible, but nevertheless the problem should have been attacked, not evaded. Doren contents himself with an inconclusive examination of the rôle played by the order of the *Humiliati* in the introduction of the industry and with a brief account of the supersession of the older *Calimala* or cloth-finishing trade by the complete process of manufacture. He incidentally suggests (p. 216) that the entrepreneur *lanaioli* had sprung from the weavers, but there is no evidence that they had ever sat at the loom. It seems probable that the chief initiative in the capitalist control both of the *Calimala* and the *Lana* was taken by the cloth-merchant; but, if any of the craftsmen contributed to the formation of the entrepreneur class, the indications would point not to the weavers but to the wool-combers who, throughout the later and better known period, remained more closely associated with the clothiers than any other of the artisans.

Doren's treatment of the wool trade is likewise unsatisfactory; it is at second hand and negligent at that. He falls into the usual mistake (since corrected by Schulte in the *Zeitschrift für die gesamte Staatswissenschaft*, lviii, 39-47) of deriving the *garbo* wool from the sultanate Algarve in southern Portugal, thus antedating by almost two centuries the development of the merino wool production. He underrates the Flemish fine cloth production; his description of the English wool trade

is superficial. He pleads that protracted researches in the archives of other countries, especially of England and Flanders, could not reasonably be expected of him, but he could at least have consulted the printed and available sources, the English Patent Rolls, for instance, or the excerpts made by Riess.

While insistence upon high quality in the raw materials, upon high technique in the preparation of the wool and in the cloth-finishing processes, together with the mastery of the commercial conditions of the time, contributed to the superiority of the Florentine product in the markets of Europe and the Orient, it is to other factors of the Florentine success that Doren has devoted his attention: to the exceptional organization of production with an advanced division and exploitation of labor, and to the operation of a town policy which both in its economic and political measures was subservient to the interests of its chief export industry. Deserving of remark in connection with this latter feature is his description of Florence's long continued effort to secure an outlet to the sea (including the hitherto unnoticed canal project of 1458), of the interesting treatment of usury in practice and in legislation, and of the war with Volterra for the coveted but worthless alum mines of Castelnuovo. The centre of interest, however, is the inner structure of the industry, the methods by which the capitalist clothier exercised control over the twenty to thirty successive stages of production. It is a curious, rambling edifice which Doren graphically depicts, where older and newer forms, elements of the handicraft system under gild organization and of the domestic system under entrepreneur direction are combined in a system *sui generis*, defying easy classification in any of the accepted industrial categories. The mediæval repugnance to the middleman finds perverted expression in the elimination of independent traders, such as the *lanivendoli* or wool-sellers and the *stamanioli* or yarn-dealers, who stood between the clothier and his supply of raw materials, while the capitalists absorbed in the export trade found it convenient to encourage the growth of a class of retail cloth-sellers between the manufacturer and the consumer. Mediæval forms remain, but are often filled with something resembling a modern content. There is a gild, but it acts solely in the interest of the entrepreneur clothiers who have captured its control; the mass of handicraftsmen are excluded or strictly subordinated. Even the well-to-do dyers, who from their special skill and capital held a comparatively favored position, retaining their political rights in the gild of the *Lana*, found these rights practically nugatory in face of a majority composed of their employers. The gild, for example, imported dye-stuffs on a large scale

and then sold them cheaper to the clothiers than to the dyers; in case of need, and partly to keep the dyers in due subordination, the gild intervened with dye-houses of its own, while the employers' interest was further protected by minute regulations as to workmanship and by a series of elaborate wage-scales for the dyers. Other of the finishing crafts, such as the shearmen, had lost their gild privileges; and although, almost alone among the artisans in the industry, they preserved to a certain extent the direct relation with the consuming public usually characteristic of the handicraft system, this relation as well as that with the clothiers was jealously regulated by the gild. The dominance of the entrepreneur was still more marked in other branches of the industry. For the weavers, wage-scales were the less necessary since they were prohibited from working for any but the clothiers of the gild, while the employer's ownership of the means of production by the growing practice of loom-leasing ensured the dependence of the workmen. And for a considerable period the large supply of labor, due in part to the immigration of Flemish and German weavers, assisted in keeping wages at a desirably low level without resorting to the expedient of gild wage-tariffs. Spinning was done by cheap peasant labor outside Florence under the direction of the clothier's factors, and the ecclesiastical authorities were complaisant enough to enforce with spiritual penalties the dictates of the gild. Finally the clothier's own *bottega* was not only an office and a warehouse where raw material and finished product were stored, but at the same time a central workshop, to which the cloth returned repeatedly in the course of manufacture for inspection and forwarding by a staff of inspectors, factors, repairers and packers. It was also a kind of factory, for here the preparatory work, the sorting, beating, combing and carding of the wool, was done by workmen to whom the old terms of journeymen and apprentices could no longer properly apply. They were laborers, as a rule at day wages, under strict workshop discipline, — a proletariat unorganized, for the right of combination was rigorously denied to all workmen in the industry, turbulent and socially despised. In the sudden fluctuations of trade they were often thrown out of work, while the custom which became prevalent among the employers of making money advances to be repaid only in labor kept the laborer from obtaining any improvement in wages during periods of prosperity.

The entrepreneur's commercial knowledge, his capital, which gave him the sole ownership of the material and in part of the tools of production, together with his gild organization had brought under centralized control the heterogeneous elements of this cumbersome industrial

system. What chiefly differentiates him from the entrepreneur of the domestic system was the coöperation enforced by the authority of the gild. As between employer and workman the gild, which in trade matters had jurisdiction over both, recognized only the interest of its members. It was not until the decline of the industry and of the power of the gild that the monarchical government of the sixteenth century interposed its authority to abate the exploitation of labor. But as between members of the gild there still existed traces of the mediæval principle of equality of opportunity. A case in point was the action of the gild during the temporary unsettlement of labor conditions following the Black Death. The smaller employers were the chief sufferers from the scarcity of hands and the rise in wages, but the gild came to their rescue not only by new wage-scales but by a limitation of the number of workmen that any one master could employ. The gild furthermore engaged in numerous mercantile and industrial enterprises whereby the inadequate private capital and initiative of the bulk of its members was supplemented and any undue preëminence of the larger capitalists within or outside the gild was curbed. These gild undertakings and the at times heavy state taxation demanded money, and it was in the course of the fiscal efforts of the gild that it hit upon the device of setting for its members a maximum of production, a measure not without bearing in the present connection.

Doren bases all this on gild documents, which he uses with dexterity and vivacity. But this vivacity has its dangers. It leads to loose statement; it tends easily to subordinate fact to effect. A conscientious reader, plodding through Doren's foot-notes (in which, by the way, misprints are more frequent than they should be), is too often disturbed by finding confident assertions of the text unsupported or inadequately supported by the evidence. Did space permit, numerous instances could be adduced of what is, to say the least, a regrettable omission. The *stamanioli*, we are told, were reduced from independent masters importing and manufacturing yarn to a class of wage-earning factors dependent on the clothiers. The leasing of looms to weavers, the advancing of money to the wool-combers is described as though it were the prevalent and constant practice of the clothiers. The dyers' wage-scales were, Doren asserts, maximum rates, differing from the silk-dyers' tariff, which — and here Doren misrepresents Pöhlmann's view — more charitably gave minimum rates. On these and other points, in default of satisfactory proof, Doren's statements must be taken largely on trust. He is bent on showing the existence of a highly developed capitalistic organization pitilessly dominating a great

mediæval industry, and he is so carried away by his advocacy of this thesis that he fails to warn us of the inevitable limitations and lacunæ in our knowledge of so noteworthy a phenomenon. We hear much vague talk, where definite information would be in place, of a "tremendous accumulation of capital" (p. 400), of a "full-grown, brutal capitalism," mastering with an "unrestrained class egoism" the "proletariat masses" (p. 481 *et passim*). He accepts uncritically the unreliable figures given by Villani for the population (including the mortality in the Black Death) and for the cloth production of Florence, together with those of the Florentine cloth export through Venice attributed to the doge Mocenigo, while he dismisses rather too airily a rare statistical statement based on the tax-list of the clothiers.¹

Doren makes some score of references to the contents of his next instalment of the *Studien*, promising among other things certain tax-list statistics. It is to be hoped that the forthcoming volume will carry less sail in the way of rhetoric and be better ballasted with facts and figures.

But in thus pleading for a better documented and more sober treatment of the subject no disparagement is intended of the abiding elements of value in Doren's work. Doren, to be sure, is not the first to discover the early existence of a capitalistic industry, nor indeed does he claim to be. Attention has recently been called to somewhat similar phenomena in Flanders by Pirenne, in Germany by Schmoller, Gothein and others, in the silk industry of Genoa by Sieveking and in that of Venice by Broglio d'Ajano; but no one has pursued this particular problem so closely on so favorable a field as has Doren. We had become accustomed in economic history to push back the beginnings of the modern period and to find here, as in the history of literature and art, earlier manifestations of modern individualism than are consonant with current notions regarding the middle ages. But Doren urges, as indeed Schmoller suggested long before him, that we must differentiate between an initial rise of capitalism in the town economy of the mediæval period, ultimately breaking down partly by reason of the limitations of that economy and of its concomitant labor organization, and a modern capitalism more happily or at any rate more securely adjusted in the wider national economy. How valid this suggestive generalization may be, how far its perspective may lead, cannot, however, be discussed within the limits of a book review.

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¹ Cf. appendix vii, a, and p. 343; the output for the year 1381-82 stated at 19,474 pieces of cloth from 279 makers as contrasted with Villani's estimate of 70,000 to 80,000 pieces from 300 makers in 1338.

L'Utilité sociale de la propriété individuelle. By ADOLPHE LANDRY. Paris, Société nouvelle de librairie et d'édition, 1901. — xii, 511 pp.

This book is intended as an argument for socialism. It does not, however, pretend to completeness, but is concerned primarily with an analysis of the conflicts between private and public interests, which the author conceives to be inherent in the very nature of individual property. No attempt is made to present a like analysis of the difficulties inherent in socialism, or to strike a balance between the relative merits of socialism and of individual property as working systems.

The book is divided into two parts, one dealing with production and the other with distribution. In the first part are discussed the curtailment of production with a view to securing larger money returns through increased prices; the conflict between gross and net product; the tendency to overproduction, or rather the uneconomical distribution of the factors of production among different industries; waste; and the tendency to sacrifice the future to the present. This part of the book concludes with a discussion of the problem of maximum productivity. The second part is divided into two sections, one treating of inequality of incomes in relation to general well-being; the other, of the best system of wealth distribution.

The chief value of the work lies in the detail, sometimes, it must be confessed, wearisome and far-fetched, with which the character and extent of the various forms of conflict between public and private interests are analyzed. Nowhere else, in the knowledge of the reviewer, will an equally detailed and systematic discussion be found. It must be said, however, that, except in the first division of the first part, devoted to the curtailment of production in the interest of higher prices and constituting the most valuable portion of the book, there is a crudeness in the conception of the facts of economic life, and a tendency to the exaggeration of partial truths, which go far to impair the value of the work. These faults can be traced in part at least to an evident lack of economic training, shown most clearly in the failure to understand so familiar a principle as Ricardo's theory of international trade (pp. 416, 417). Thus, in the section devoted to the consideration of gross and net product, the author seems to hold that the value of land and capital is determined by their productivity; hence, if it is necessary on account of the high value of these factors to economize their use in a certain industry, that fact itself is proof that their value in some other industry is greater than in the industry in question; and the economy is bene-

ficial from the point of view of the public. The wage of the laborer, on the other hand, is determined, not by his productivity, but by his needs. If he cannot be profitably employed in a certain industry, the probable reason is, in a well-developed country at least, not that he has a higher value in some other industry, but simply that he cannot produce the equivalent of his wage. Not to employ a laborer who cannot produce his wage is, however, an injury to the community, which loses whatever productive power the laborer may possess. Approaching the same question from another standpoint, it is argued that instruments of production, other than labor, involve cost. If their cost exceeds their product, their use is evidently injurious to the community. Laborers, however, have no cost, and whatever they produce is clear gain. Economy in labor, therefore, which involves a diminution in the number of laborers, results in loss to the community. It can be readily understood how from such premises, more appropriate to a work on the administration of charity than to a work on economics, it is possible to reach, for example, the conclusion that England would be more populous and enjoy a larger revenue if it produced its own food supply (pp. 109, 127).

While the securing of the maximum production is the great economic problem, the failure to solve which condemns, in our author's view, the existing system, the present economic organization is open to criticism also on the ground that, since wealth is unevenly distributed, the productive power actually employed is not so distributed as to yield the maximum amount of satisfaction of which it is capable.

In his brief treatment of socialism as a constructive system, M. Landry accepts the principle of equal distribution of wealth, subject to such slight modifications as may be necessary to secure efficiency in production. He recognizes that demand and supply, and not the principle of labor cost, must control prices, and that it may be necessary for the state to regulate the growth of population, which he thinks can be easily done by making the family responsible for the care of children when it is desired to discourage the growth of population, and by placing the responsibility on the state when it is desired to encourage it. It would simply be a question of choosing the number that, all things considered, might seem desirable (p. 128).

While the book has a real value, and is often suggestive even when it is not convincing, it is far from being an adequate discussion of the subject which it treats.

HENRY B. GARDNER.

BROWN UNIVERSITY.

Pure Sociology. A Treatise on the Origin and Spontaneous Development of Society. By LESTER F. WARD. New York, The Macmillan Company, 1903. — viii, 607 pp.

Except perhaps to readers already familiar with the author's previous works, it would be impossible to convey in a few paragraphs even an approximate idea of the contents of this volume. We might compare it to an algebraic formula of two complex terms. These are "genesis" and "telesis." The argument is an analysis of these two terms into their principal components. This, however, would be Greek to one who had not read the book. Another way of suggesting its contents would be to say that the principal words of the alternative title may be rearranged so as to stand for the subject-matter and the chief points of view from which the subject-matter is considered: "society," "origin," "development," "spontaneous." The phenomena of society in general present the problems. Among them, problems of the origins of society are primary; the idea and the fact of a progressive unfolding are next in order; and that portion of the process which the author proposes to treat in this book is the spontaneous phase. Those human actions in which men say to themselves, "Go to now, we will modify society," are reserved for a future volume. Attention is directed in this book to those social developments that take place while men's thoughts are not fixed upon society as such at all, but while they are obeying impulses that are relatively individual. The inquiry might be paraphrased in the question: "What are the lines and the laws of convergence through which acts not so intended by the actors produce or modify social combinations?"

Since space does not permit a *résumé* of the contents of the book, it is best worth while to indicate its importance. The author recurs now and then to a familiar phenomenon which he expresses as "the illusion of the near." The attitude of the majority of Professor Ward's contemporaries toward his book has furnished a clear instance of that vagary. The book before us confirms an opinion which has been growing upon the present reviewer since the *Dynamic Sociology* appeared twenty years ago. "The illusion of the near" chiefly accounts for any failure by his contemporaries to recognize Professor Ward as entitled to rank with the world's first-rate philosophers. Indeed, the query may be raised whether he is not to be classed as a philosopher rather than as a sociologist, for, although he is by general consent the Nestor of American sociologists, he appears in *Pure Sociology* as an explorer in positive philosophy, with society as his base. But his interest as

here revealed is in a range of generalization that correlates all the phenomena and problems of biology, psychology and sociology. The work therefore is comparable not with Spencer's *Principles of Sociology*; it is rather in the same genus with that writer's *First Principles*. Considering the mass of knowledge and the complexity of relationships with which Professor Ward is familiar at first hand, in contrast with the nearly empty formal categories which are the stock in trade of most philosophers, and considering the scope of his thought with reference to this material, the *Pure Sociology* strengthens the conviction that when he is far enough away for the "illusion of the near" to vanish, he will come into focus in the history of thought as a not less conspicuous figure than Comte, and not at all hidden by the shadow of Spencer.

The essential interest of the sociologists is in getting as many social categories as possible, and as soon as possible, in shape for use in criticising our own passing phase of the social process. In the book before us this interest appears to be incidental rather than central in the author's thinking. This, however, is immaterial. So too is the question whether this volume speaks a final word upon any of the philosophical problems with which it deals. Some of the most useful thinkers have opened more questions than they have closed. Whether or not the mental type that tries to think things through is approaching extinction, the *Pure Sociology* reveals Professor Ward as a stalwart survivor of the species, and no one that wants to get an all-round look at things from the social point of view can afford to neglect this his latest book.

ALBION W. SMALL.

UNIVERSITY OF CHICAGO.

Les Finances de la Russie au XIXe Siècle. By JEAN DE BLOCH.
Paris, Guillaumin, 1899. — 2 vols., 265, 267 pp.

Russlands Finanzpolitik und die Aufgaben der Zukunft. By K. GOLOVIN, from the Russian of KOLOSSEVSKI. Leipzig, Otto Wigand, 1900. — 233 pp.

A history of Russian finance requires frank and independent treatment, for the official reports and statements tell only a part of the story. A borrower naturally wishes to give the best possible aspect of his resources and prospects, for on them his credit depends. Russia has long been borrowing in foreign markets, and the budget statements have more than once dwelt upon the possible revenues and the plans of retrenchment, rather than on the actual condition of treasury and people. It is the foreign purchaser of Russian stock who is addressed, rather

than the people of Russia or the student of public finance. It is difficult to place implicit confidence upon the figures submitted in the budget reports; and this confidence is further shaken by a comparison of results with promises, after the budget has been closed. The true balancing of income and expenditure is not only never attained, but the differences are so large as to be difficult of explanation on any reasonable grounds.

The volumes of Bloch are what might be expected of this distinguished exponent of peace principles. He arrays his facts in almost a strict chronological order, taking the figures of each year's accounts and giving with them the more important intentions of the minister of finance, the projects of reform or change, and the administrative regulations introduced. The reader will find in these annals a fair presentation of the facts and an orderly arrangement, which, however, would have been far more useful with an index. Unfortunately the work closes with 1882, and many of the most important changes in financial policy have been introduced since that time. It suffers too from the absence of definite criticism of the many schemes which the necessities of the state have called forth. That the whole financial system was "vicious" until about 1870 is admitted, and it is interesting to note how far the author admits that many of the vices are still existent. So much depends upon this spirit of interpretation that it is only by reading between the lines that the real attitude of M. Bloch can be determined. His story is a very simple one on its face. It is that of a long series of deficits, covered by emissions of paper money and foreign loans. The remarkable growth of ordinary and extraordinary expenses, with a slower development of ordinary revenues, marks the weak point in the system, and explains why resort is had to so many expedients for raising money. Taxation tends to become ineffective, and the arrears of unpaid taxes and dues have increased. New taxes are in part neutralized by the real poverty of the country, the heavy cost of collection, war, and the desire of government to encourage domestic industries. The value of the paper money has been another difficulty, and the political relations with other powers have imposed upon Russia undertakings that weigh upon her finances without making as yet any returns. M. Bloch gives a long list of expedients for obtaining an adequate revenue, but they all seem to have fallen short, driving the government to its usual resource — the foreign money market. The fact is noted that the offer of the bonds of the United States in Europe during the Civil War exercised a detrimental influence on Russian securities, but the subsequent wanderings of the im-

perial stocks from London to Berlin and from Berlin to Paris, in response to political exigencies, belong to a later period than is covered by these volumes of M. Bloch.

Russlands Finanzpolitik is more concerned with the sources of Russia's wealth, and especially with the agricultural condition of the empire. There will be found a close study of the ownership and cultivation of the land, and if the conclusions are sombre, the author appears justified by the facts. A part of these conditions has grown out of measures of internal policy, like the disposition made of the land at the emancipation of the serfs. Another part is due to such world-movements as the fall in the price of grain. That Russia is threatened with an agricultural proletariat is demonstrated, although the situation is not hopeless. The programme of reforms is a long one, calling for much intervention on the part of the state. It involves practically every phase of agricultural activity, from the education of the peasant in methods of cultivation to the regulation of the export of the product. It is impossible even to summarize the recommendations of our author, for they involve a recasting of the social life of rural Russia, and approach the revolutionary in their application.

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The Unreformed House of Commons, By EDWARD PORRITT, assisted by ANNIE G. PORRITT. Cambridge, at the University Press, 1903. — Two volumes, 623, 584 pp.

By the "unreformed House of Commons" Mr. Porritt means the representative branch of Parliament as it was before the Reform Act of 1832. But the term, as it is used in the title of this work, is also made to cover a discussion of the Scotch parliament and of the Irish house of commons as they were before the Acts of Union, and of the representation of Scotland and Ireland in the unreformed imperial Parliament. The authors discuss borough and county representation in all the three kingdoms, from their origin in the later middle age to their union and consolidation in the electoral system of Great Britain as it was in the early nineteenth century. In Scotland also the lords, as well as the commons, are brought within the limits of their subject, because both orders sat together in the same house. In the treatment of the English and Irish parliaments, however, only such reference is made to the Lords as is required to explain the relations which existed between the commons and the respective upper houses.

But the authors have done much more than to describe the electoral systems in the three kingdoms and to trace their historical development. They treat at length of the relations between members and their constituents, whether the latter were communities or patrons. The usages and procedure of the houses are also the object of prolonged attention; in the case of the English house no less than eleven chapters are devoted to this subject. Among them appears an original and valuable discussion of the evolution of the speakership from its early condition of dependence on the crown to its modern attitude of non-partisanship. The personnel of the House of Commons, its relations with the press, the privileges of its members, and even its officials, the places of its meeting and the method of creating the members, receive detailed attention. Briefer accounts are given of the same features in the development of the other houses. In the case of the Irish parliament interesting chapters are also devoted to the workings of the Poynings law and to the history of the Act of Union of 1800. The material which is brought together in these chapters covers much the same ground in the early modern period as that relating to the middle age which is given by Stubbs in his chapter on the antiquities of Parliament. The information thus brought together not only shows how the houses were elected, but how and under what conditions their business was done.

The plan of the present work excludes, so far as possible, all reference to efforts in favor of parliamentary reform. The history of that movement is reserved by the authors for possible treatment in the future. Their efforts in the volumes now published have been confined to an exposition of what the old Parliament was and of the electoral system which was connected with it. For this purpose extensive use has been made of the journals and statutes of the three parliaments concerned, of parliamentary histories and other reports of debates, of correspondence, memoirs and a great variety of historical and biographical material. Unprinted sources have been used only to a limited extent.

The work is based on wide though not exhaustive research and is of great value. It is a decidedly original contribution to the study of the English constitution. It deals with a group of facts to which little systematic attention has hitherto been paid. Its subject lies in the immediate rather than the remote past, and therefore it helps directly to explain the growth of institutions as they now are. It helps to bridge the as yet unspanned gulf which lies between the mediæval constitution and the political system of the present time.

The book, however, is not a literary success. It has neither introduction nor conclusion. It contains very little generalization. No

attempt is made to give a picture of the political society of which the old electoral and parliamentary system was the consummate flower. The subject was apparently not grasped as a whole, or in its setting, but in parts. The book does not indicate that the authors had dwelt intellectually in the old aristocratic society of Great Britain long enough to become thoroughly conversant with it. It indicates diligent note-taking rather than wide reading and prolonged meditation. The book is therefore hard to read. It is a work to be consulted rather than read through. Though of great value as a contribution to knowledge, it is not itself in all respects a finished product.

HERBERT L. OSGOOD.

Self-Government in Canada and how it was achieved: The Story of Lord Durham's Report. By F. BRADSHAW. London, P. S. King and Son, 1903. — 414 pp.

It does not seem likely at present that Mr. Chamberlain will succeed in convincing the British people that preferential tariffs are necessary to the preservation of the empire, but at least he has the satisfaction of knowing that his agitation has aroused the keenest public interest in colonial questions. Of the many books dealing with those questions which have appeared in the last half decade, few, if any, teach such valuable lessons as are to be found in the volume under review. Great Britain has never faced a more difficult colonial problem than that which confronted her in Canada at the close of the Seven Years' War, and the story of her struggles to find a satisfactory solution is one of the most instructive chapters in the history of the empire. The central feature of the book is an exhaustive analysis of Lord Durham's report. But to appreciate this document one must have a picture of the social, economic, religious and political conditions of the country at the time when it was written. One hundred and twelve pages are accordingly devoted to a sketch of the history of Canada from the English conquest in 1760 to Durham's arrival in 1838. The "rule of the soldiery," the constitutions of 1774 and 1791, the Papineau and Mackenzie agitations and the rebellion of 1837 are discussed briefly but thoroughly. The reader is thus saved the necessity of plodding through the ponderous tomes of Kingsford to get in touch with the historical situation.

The disturbances of 1837 were restricted to Upper Canada, where there was a large American element, and to Lower Canada, where the French predominated. There was also considerable dissatisfaction in

the Maritime Provinces, but the intensely British character of the population prevented an open revolt. In Upper Canada the ruling class was composed of the earliest English settlers and of American loyalists who had left the United States at the close of the Revolution. An oligarchy at Toronto, the so-called "family compact," practically controlled the government. Opposed to it were the Dissenters, whose ranks were recruited largely from the later American, Irish and Scotch settlers. Political and religious questions were involved, but, as Mr Bradshaw shows, the most serious grievances were economic in character. The "family compact" and the Established Church had received huge grants of the best land in the province, which they were unable to improve and settle. The people also suffered from the lack of transportation facilities. The Welland canal had been constructed at great expense, and work had been begun on the Cornwall canal, but for lack of capital it was not completed. The government was accordingly compelled to meet enormous interest charges and to keep in repair a public work, which, under the circumstances, was comparatively useless. The situation was made worse by the persistent refusal of Lower Canada to take any steps toward deepening the St. Lawrence. In Lower Canada the French Roman Catholic majority was arrayed against the English Protestant minority, an ignorant and inefficient peasantry against merchants of wealth and intelligence. The French had numbers, the English had wealth; the French voted the taxes, the English had to pay them. As Durham expressed it, there were "two nations warring in the bosom of a single state." That there should have been continual strife between these factions in the two provinces was inevitable. But when the final appeal to arms was made, only the most extreme radicals responded. The Methodist influence was thrown against Mackenzie in Upper Canada, and the influence of the *curés* against Papineau in Lower Canada.

Lord Durham arrived at Quebec, May 28, 1838. The act which provided for his appointment and the instructions which he received from the government were apparently intended to confer upon him the powers of a dictator. At any rate, he acted upon that hypothesis. One of his measures was to issue an ordinance by which the leaders in the recent rebellion, without being permitted even the form of a trial, were condemned to exile in the Bermudas and were threatened with death in case they returned. Parliament disapproved of the ordinance, and he resigned.

Although he was in Canada only five months, Durham was able, with the aid of a valuable corps of assistants, to make a careful study

of the situation. The results were published in the report, which has been characterized as "one of the ablest state documents ever penned." Bradshaw gives us a detailed study of each of its five sections: Lower Canada, Upper Canada, the Maritime Provinces, public lands and emigration, and recommendations. The various problems, racial, religious, political, social and economic, are explained and discussed with thoroughness and freedom from prejudice. Durham's recommendations have been of great value to the British government. He advocated the union between Upper and Lower Canada, which was brought about in 1841. That measure, to be sure, proved unwise, but the remedy adopted for the evil in 1867 was that of a legislative union of all the provinces, which had also been suggested in the report. Finally, the extension of the system of parliamentary government to the colonies, the foundation of Britain's new colonial policy, was strongly recommended by Durham, although he did not originate the idea.

The problem of authorship is one of the most interesting questions that have come up in connection with the report. The truth of the epigram that "Wakefield thought it, Buller wrote it, Durham signed it" was called into question many years ago. John Stuart Mill regarded Buller as practically the sole author; an article in the *British Quarterly Review* for November, 1849, attributed it to Wakefield; Egerton is equally convinced that the credit belongs to Lord Durham himself; Dr. Garnett divides the honors almost evenly between Buller and Durham and assigns to Wakefield a subordinate share (see the *English Historical Review*, April and July, 1902). Bradshaw's account confirms Dr. Garnett's theory of triple authorship, but he is inclined to be more favorable to Wakefield and Durham and a little less so to Buller.

W. ROY SMITH.

BRYN MAWR COLLEGE.

South Carolina as a Royal Province, 1719-1776. By W. ROY SMITH. New York, The Macmillan Company, 1903. — 441 pp.

This work is essentially a development of the following thesis:

Without assuming, as Chalmers does, that the colonists were all along consciously striving for independence, I think we may safely affirm that the real history of the revolt dates from the founding of the first English settlements in Virginia. . . . The object of this monograph is to trace the progress of the struggle in South Carolina, with the hope that it may throw some light upon the history of the American Revolution [preface, p. v].

By the struggle in South Carolina Dr. Smith means the series of party contentions between the governor and council on one side, defending the king's prerogative or the interests of the proprietors, and the lower house, defending popular rights on the other side. In his view this struggle was similar in all the colonies and was a reproduction, on a small scale, of the constitutional history of the mother country. In other words, it was a part of the great movement towards democracy, a reaction against the régime of centralized monarchy.

The author has divided his work into three sections. The introductory section treats of the evidence of contention and strife between the settlers and the proprietors. The next section sets forth the disputes concerning the land grants, the land frauds and the quarrel over the quit rents. The last section contains a good account of the organization and workings of the colonial government, with chapters on the executive, the legislature, the judiciary, the colonial agents, militia and defense, the financial history, and lastly, on the attempts, under George III, to restore the power of the governor and council over the lower house and the people — acts which drove the colonists into open revolt.

The work shows that the author has made a painstaking search in all the available sources for the facts bearing upon the subject. He has set these forth in chronological order and under appropriate headings so as to bring out and illustrate his thesis. The book is free from mere argumentation. The facts, so far as they have been obtainable, are permitted to tell the story. The author's style is clear and straightforward throughout. Perhaps the best chapter is the rather long one on financial history. This chapter throws a good deal of light on the controversies over paper money and the contention of the lower house that it had a right to a controlling power in the levying of taxes and, to a certain extent even, in the appropriation of the public funds. It appears that the people had won a substantial victory long before the reign of George III. Through their control of the finances they forced the governor and council and the courts to yield again and again to the popular demands. Finally the lower house absorbed a good share of the law-making power and even encroached on the functions of the executive through the appointment of innumerable commissions to carry particular statutes into effect. It was the attempt of the royal officials under George III to abolish these irregular practices, and restore the government in practice to what it was on paper, that irritated the colonists into armed resistance.

The author does not attempt to show any causal connection between

the early quarrels of the people with the representatives of the home government and the Revolution. His aim is merely to give a faithful account of these controversies so as to enable us to see what state of things really preceded the final revolt. If studies of this sort do nothing more, they at least correct the old view that the American Revolution turned about the patriots of Boston, Philadelphia and Richmond, and show that it was deeply rooted in the local constitutional history of every colony.

WM. A. SCHAPER.

UNIVERSITY OF MINNESOTA.

Citizenship of the United States. By FREDERICK VAN DYNE, assistant solicitor of the Department of State of the United States. Rochester, N.Y., The Lawyers' Coöperative Publishing Company, 1904. — xxvii, 385 pp.

Das amerikanische Bürgerrecht. Von BURT ESTES HOWARD. Staats und völkerrechtliche Abhandlungen, herausgegeben von Georg Jellinek und Georg Meyer, Band IV, Heft 3. Leipzig, Duncker und Humblot, 1904. — x, 155 pp.

If Mr. Van Dyne had something of Mr. Howard's constructive bent and courage in generalizing, or if Mr. Howard had Mr. Van Dyne's extensive and accurate knowledge of judicial and administrative precedents, either of them might have produced a very satisfactory treatise on the acquisition and loss of United States citizenship. Mr. Van Dyne has given us a most useful collection of material. He has brought together, under each topic discussed, the laws, elucidated in some cases by the Congressional debates; the decisions of federal and state courts and of certain international arbitration commissions; the opinions of attorneys-general and the decisions of the Department of State. Apart from the fact that he has devoted sixty pages, one-fifth of his entire text, to excerpts from the majority opinions in the case of *Downes v. Bidwell* — opinions which deal with citizenship only *obiter* and which are so easily accessible that it seems needless to reprint so much of them — there is little to criticize either in his inclusions or his exclusions. He does not, however, always state clearly or arrange logically the rules which are embodied in this mass of material.

In presenting the common-law rule, reenacted in the fourteenth amendment to the Constitution, that birth in the territory of the United States establishes citizenship, Mr. Van Dyne does not indicate in any one place just what exceptions are contained in the clause "subject to

the jurisdiction" of the United States. In describing the legislation which has regulated the status of the foreign-born children of American citizens, he concludes with the assertion, for which no authority is cited, that the persons who thereby acquire American citizenship are natural born citizens of the United States. This proposition has been the subject of too much controversy and the opposing arguments are too strong to justify so unqualified a statement. Until the question is decided by the Supreme Court, it will be an open one. In dealing with cases of dual citizenship resulting from conflicts of *jus soli* and *jus sanguinis*, Mr. Van Dyne declares that "such conflicts are not resolved by a resort to the principles of international law" (page 25). By this he probably means only that international law does not determine nationality. If, however, he intends to question the assertion repeatedly advanced by our State Department — that international law accords to the *sujet mixte*, when he attains majority, a right to elect a single nationality — his position is well taken. The principle of election is, as Mr. Van Dyne remarks, "recognized by a large number of states," but it is not yet a principle of international law. The only rule of international law in this matter is that each state to which the *sujet mixte* owes allegiance is entitled to enforce its own laws within its own jurisdiction. The theory of election was never brought into this class of cases, either in European or in American diplomacy, until in the administration of President Buchanan our State Department began to claim a right to protect naturalized American citizens against the governments to which their original allegiance was due. Having taken this position, it began to apply the doctrine of election to cases where a dual allegiance existed at birth. Secretary Hay has returned to the older and sounder view, not merely in the case of those who have dual nationality by birth but also in the case of naturalized citizens who are still claimed as subjects by their original sovereigns. He wrote in 1900:

In international law the status of such persons comes under the doctrine of dual allegiance, each government claiming and exacting the allegiance of its naturals [nationals?] within its own jurisdiction and each being incapable of enforcing its own municipal law of citizenship within the jurisdiction of the other [page 301].

In discussing expatriation, Mr. Van Dyne points out (as several of our Presidents have pointed out, in fruitless appeals to Congress for legislation) that although in 1868 Congress declared expatriation to be a "natural and inherent right of all people," neither this act nor any

subsequent legislation has indicated what steps the American citizen must take to divest himself of his nationality. This statement, however, is not quite true: Congress has indicated two methods in which the American may exercise his natural and inherent right of expatriation. He may enlist in, and desert from, the military or naval service of the United States, or he may go beyond the limits of the United States with the intent to avoid a draft into the naval or military service. American citizens pursuing either of these courses "are deemed to have voluntarily relinquished and forfeited" their rights of citizenship (Revised Statutes, secs. 1996, 1998). Under our expatriation treaties, the American citizen may, of course, divest himself of his citizenship by voluntary naturalization in another country. As to other modes of expatriation, the State Department, with some slight assistance from the courts, has endeavored to fill the open places in our law by decisions granting or refusing protection. These are conveniently summarized by the author on pages 273-282.

Mr. Van Dyne's book was printed too soon to enable him to include the decision of the United States Supreme Court in the case of *Isabella Gonzales* — a decision which determines the political status of our insular dependents. He notes without comment the decision of the circuit court that the Porto Ricans were to be regarded as aliens. Now that the Supreme Court has affirmed the contrary, it seems necessary to admit that between citizens and aliens there is in the American empire an intermediate class of American subjects or, as the newer and gentler phrase describes them, "nationals." To this class belong also, since Congress has swept away the fiction of their tribal independence, the Indians who have not yet obtained citizenship under the acts of 1887 and 1890.

Mr. Howard's treatise is largely devoted to setting forth the rights and immunities of United States citizens, but in the opening sixty pages he deals with the acquisition and loss of citizenship. His discussion of the relation of federal and state citizenship before and since 1868 (pages 4-10) is clear and accurate; but his interpretation of the present law governing the acquisition of federal citizenship by birth (pages 11-38) is as indefensible as it is novel. He asserts that, under the proper construction of the fourteenth amendment, children born in the United States of alien parents temporarily resident therein are not citizens of the United States; that our citizenship attaches *jure soli* only to the children of domiciled parents. He asserts also that, under the proper construction of the act of 1855, children born abroad of American parents who intend to return to the United States are natural-

born citizens of the United States, but that American citizenship is not acquired by such children when the parents are domiciled abroad. There is no warrant for these opinions in the Constitution or laws of the United States or in the decisions of the courts. The act of 1855 indeed declares that "the rights of citizenship shall not descend to children whose fathers never resided in the United States"; but this restriction does not affect the citizenship of the first generation born on foreign soil. The State Department, in its discretion, may withhold protection from the American-born father domiciled on foreign soil and from the children born to him abroad, when it is convinced that there is no intention on their part to become residents of the United States, but the State Department cannot denationalize them. As regards the fourteenth amendment, it was indeed asserted by Justice Miller in an inconsiderate dictum in the *Slaughterhouse Cases*, that the phrase "subject to the jurisdiction" was intended to exclude the children of aliens born in the United States, but he made no exception in favor of domiciled aliens. And while in the notable series of cases which have recognized the American citizenship of Chinese persons born in the United States, from that of *Look Tin Sing* (21 Fed. Rep. 905) to that of *Wong Kim Ark* (71 Fed. Rep. 382, 169 U.S. 649), all the persons whose American citizenship was affirmed were in fact born of parents long resident and probably domiciled in the United States, the decisions were not based on this fact; and in the case of *Gee Fook Sing* (7 U. S. App. 27, 49 Fed. Rep. 146), who was taken by his parents to China when three years of age, the judgment of the circuit court denying protection was indeed sustained, but this decision was put solely on the ground that birth in the United States was not proved. Mr. Howard's solution of this whole question (which is the solution adopted in the Dutch and Italian laws) has much in its favor from the point of view of legislative policy, but in the existing law of the United States it has no basis whatever.

The latter part of Mr. Howard's pamphlet, which deals with the guarantees of civil liberty in federal and state constitutions and which is largely based upon the work of Judge Cooley, will be of real value to German readers. Mr. Howard's German is clear and good, and his translations of technical English expressions are frequently very felicitous.

MUNROE SMITH.

RECORD OF POLITICAL EVENTS.

[From November 20, 1903, to May 1, 1904.]

I. INTERNATIONAL RELATIONS.

ASIATIC AFFAIRS. — The event of overshadowing importance in world-politics was the outbreak on February 8, after six months of fruitless negotiations, of the long expected war between Russia and Japan. As far as can be ascertained from the official statements of both governments the demands of Japan were: (1) Russian recognition of Chinese sovereignty in Manchuria; (2) Russian recognition of Korea's independence and territorial integrity, of Japan's preponderant interests in Korea, and of equal commercial opportunity in that kingdom for all nations; (3) the erection of a neutral zone on both sides of the Yalu River between Manchuria and Korea; and (4) the engagement upon the part of Russia not to impede the eventual extension of the Korean railroad into the southern part of Manchuria. Russia, on the other hand, took the ground that the question of Manchuria concerned first of all China herself, and secondly all the powers having commercial interests in China, and accordingly declined to deal with it in a special treaty with Japan. She eventually offered to embody in an agreement with Japan a clause in which a pledge to respect the rights of Japan and of other powers in Manchuria under their respective treaties with China was to be coupled with a mutual declaration that Manchuria lay outside the sphere of Japanese interests; but this offer, which Japan considered intrinsically inadmissible, was made upon the condition that Japan should also agree to the establishment of a neutral zone in Korea north of the 39th parallel and should engage not to use Korean territory for strategic purposes. The slow progress of the negotiations aroused popular dissatisfaction in Japan, and in December the lower chamber of the Diet passed a vote of lack of confidence in the cabinet. (See below, ASIA.) On January 13 the Japanese government delivered to the Russian minister at Tokio a note with counter proposals and requested a prompt answer. After waiting three weeks for a reply, and being informed that Russia was making active military preparations and moving troops toward Korea, the Japanese government decided on February 6 to break off negotiations and "resume its liberty of action." Accordingly a mutual withdrawal of ministers followed, and on the next day, February 7, Japan seized Masampho as a basis of operations and began landing troops in Korea. Hostilities began on February 8, with a midnight attack upon the Russian squadron at Port Arthur by Japanese torpedo boats, which disabled the battle ships "Retvisan" and "Tsarevitch" and the cruiser

"*Pallada*." Later in the morning the Japanese fleet bombarded Port Arthur and inflicted further damage on the Russian fleet. On the same day the Russian cruiser "*Varyag*" and the gunboat "*Korieta*" were sunk off Chemulpo after an hour's battle with a Japanese squadron. On February 12, formal declarations of war were issued by both governments, accompanied in each case by a review of the negotiations and a statement of grievances. Russia threw upon Japan the responsibility for breaking off the negotiations, while Japan justified her action by Russian procrastination and military preparations. On February 23 the Russian government issued a note to the powers protesting against Japanese occupation of Korea, the government of which had in January announced its intention of maintaining the strictest neutrality in the event of war. In the same note Russia charged the Japanese with committing a flagrant breach of international law by suddenly attacking the two Russian warships in the neutral port of Chemulpo, not only before any declaration of war, but when, by the cutting of telegraphic communications, they had prevented the Russian commanders from receiving notice of the rupture of diplomatic relations. — Soon after the outbreak of hostilities, Mr. Hay, the American Secretary of State, addressed to the signatory powers of the Peking protocol (see RECORD for June, 1901, p. 388), including Japan and Russia, a note inviting their cooperation in maintaining the neutrality of China, in causing to be respected the "administrative entity" of that empire, and for localizing hostilities within as small an area as possible so as to prevent undue disturbance of the Chinese people and interference with the peaceful commerce and intercourse of the world. Favorable replies announcing adherence to the principle of the note were promptly given by all the neutral powers addressed. Russia and Japan both assented with certain qualifications; Russia reserving the right to prosecute the war in Manchuria and to limit therein Chinese administrative control so far as it affected certain Russian railroads, Japan reserving the right to treat Manchuria as outside the proposed neutral zone and to take any action therein necessary to offset Russian violation of Chinese neutrality. On March 29 Admiral Alexieff placed Niuchwang under martial law, and the place has since been fortified by the Russians. — An important diplomatic incident of the war was the conclusion on February 23 of a treaty between Japan and Korea, by which Japan undertakes to guarantee the independence and integrity of Korea and by which Korea becomes a virtual protectorate of Japan. To this end Japan is to be allowed to occupy Korea when "circumstances require," and the Korean government is to adopt the advice of Japan in regard to improvements in administration. Three days later the Korean government announced a formal alliance with Japan in the war against Russia and at once ordered Korean troops to join the Japanese army in the field. It was announced at the same time that the Korean port of Wiju, forty miles above the mouth of the

Yalu, was to be thrown open to the commerce of the world. In the meantime Russia served notice on Japan that she should hold Japan responsible for Korea's action, and Japan warned China that her neutrality would be respected only on condition that she should scrupulously observe it herself. In April the Russian government officially announced that no offer of mediation would be accepted, and that no neutral power would be permitted to interfere, at the close of the war, in determining the conditions of peace. Early in the war the Russian government declared that it proposed to treat coal as unconditional contraband of war and in April it announced that all newspaper correspondents using wireless telegraphy to send reports from the war zone would be treated as spies. — Meantime military operations proceeded without decisive results. On February 23 General Kuropatkin, the Russian minister of war, was appointed to command the Czar's armies in the East and Admiral Makaroff, an aggressive leader, was put in command of the naval forces. Admiral Alexieff was left in nominal supreme command as viceroy. On April 20 it was stated that he had tendered his resignation in consequence of friction with other officers in high command and on account of criticism directed against his inactivity; but later it was announced that the Czar had refused to accept the resignation. On April 13 the hopes of the Russians in Admiral Makaroff's leadership were blasted by a catastrophe which occurred in the harbor of Port Arthur. This was the destruction by a floating mine of the Russian battleship "Petrovavlovsk," which resulted in the death of the admiral and over 500 officers and seamen. Admiral Skrydloff was appointed as the successor of Admiral Makaroff in the command of the eastern fleet. At the close of this RECORD Port Arthur had been repeatedly attacked by the Japanese fleet under the command of Admiral Togo and several attempts had been made to close the harbor by sinking merchant ships at its entrance. The Russian fleets thus far have been practically bottled up in the harbors of Port Arthur and Vladivostock, and have been unable to impede the transportation of the Japanese military forces to Korea. In the latter part of April the Japanese army began crossing the Yalu River, and on May 1 it won a notable victory over the Russians at a point ten miles north of Antung. — While Russia's energies were tasked to the utmost by the contest for the control of Manchuria, Great Britain had free hand for her advance into Thibet. The British expedition, commanded by Colonel Younghusband, began its movement in July last, for the purpose, it was asserted, of discussing with the Thibetan authorities certain questions with regard to boundaries and trade, it being alleged that the Thibetans had failed to observe their treaty relations with India. With 500 officers and troops Colonel Younghusband occupied the Chumbi Valley, the "Key of Thibet," and sent a message to the Lama announcing his arrival. He was informed that the British mission would not be received in Thibetan territory. Thereupon Colonel Younghusband fortified his position and called upon

his government for reinforcements, which were promptly sent. Late in March the expedition was attacked near Geru by the Thibetans, and in the ensuing battle the Thibetans suffered a loss of 400 men. The expedition continued to advance and on April 4 entered Geru. On April 14 Gyantse surrendered to the British without resistance.

EUROPEAN AFFAIRS — For some weeks following the outbreak of the Russo-Japanese War it was believed that several other nations were in danger of becoming involved in the conflict. Active military preparations on the part of several neutral governments were reported; proposals to increase military and naval budgets were warmly discussed in several parliaments; and slight financial panics affected the bourses of the larger cities. The governments of Sweden-Norway and of Denmark entered at once upon a consideration of precautionary measures for the protection of their neutrality, the Danish government going so far as to call out the reserves and to place its navy in readiness. In France **pro-Russian sentiment** was increasingly manifest and the expressions of sympathy for Russia were so marked as to attract general European attention. An official canvass of the French parliament early in March showed a considerable majority of both chambers to be in favor of supporting the Franco-Russian alliance. It was announced, however, that the government would maintain strict neutrality under all circumstances. The attitude of Germany also was marked by evidences of friendship for Russia and an increasing cordiality toward France. In Great Britain the **anti-Russian feeling** was the stronger by reason of the British alliance with Japan (see RECORD for June, 1902). A considerable increase was made in the naval budget and the navy was refitted for active service. The king, however, announced a policy of complete neutrality. — The opposing contingent commitments of France and Great Britain with regard to the war in the East have not affected the increasing cordiality between the two nations to which reference was made in the last RECORD (p. 735). On April 8, after long negotiations, an **Anglo-French colonial settlement** was signed at London. It comprises three separate instruments, the first of which deals with Egypt and Morocco; the second settles the long-standing dispute concerning French fishery rights on the shore of Newfoundland, and in connection therewith adjusts certain differences with regard to possessions in Africa; the third relates to Siam, the New Hebrides and Madagascar. By the first instrument France withdraws all opposition to Great Britain's continued occupation of Egypt, and Great Britain, her commercial rights being guaranteed, recognizes the preponderant interests of France in Morocco. By the second instrument, France surrenders the right to dry or cure fish on the coast of Newfoundland, while she retains to a certain extent the right to take fish in common with British subjects. For this relinquishment France obtains a money indemnity as well as certain concessions in West Africa in the form of frontier readjustments and improved

facilities of communication. By the third instrument, minor disputes concerning British and French interests in Siam, the New Hebrides and Madagascar are settled. The amicable settlement of so many long-standing disputes is regarded as a notable diplomatic triumph and is thought to remove the last barriers in the way of permanent peace between the two nations. Some dissatisfaction has been expressed in Germany at the Anglo-French *entente*, on account of the fear that German rights in Morocco may be endangered. — Other notable diplomatic achievements which are calculated to aid in the maintenance of the general peace of Europe have been the conclusion of arbitration treaties between Great Britain and Italy, between Great Britain and Spain, between France and Spain and between France and Italy. These treaties are substantially identical with the Anglo-French convention of October 14, 1903 (see last RECORD, p 735): it is agreed that disputes of a judicial nature, or such as relate to the interpretation of treaties which cannot be settled through the regular diplomatic channels, shall be referred to the Hague Tribunal, provided they do not affect the vital interests, independence or honor of the contracting states and do not concern the interests of third parties. A treaty of arbitration which contains no limitations in regard to questions that may be decided by the Hague Tribunal was concluded between Denmark and Holland in February. — Between France and the Vatican there has been increasing tension on account of the anti-clerical policy of the French government. It was reported in March that the French premier had declared it to be the intention of the government to denounce the Concordat and prepare for the separation of church and state (see FRANCE). The relations between Austria and Italy have been marked by grave "Irredentist" disturbances in Italy, on account of the refusal of the Austrian government to allow the establishment of a free Italian university at Innsbrück. — In March a treaty was concluded between these two governments for the maintenance of the *status quo* in the Balkans, both parties pledging themselves not to undertake territorial occupation in the Balkan states. In November it was announced that the Porte, after much objection and delay, and yielding only to outside pressure, had accepted in principle the Austro-Russian reform scheme for Macedonia presented to the Ottoman government on October 22 (see last RECORD, p. 748). The features of this scheme to which the Porte most seriously objected were the appointment of foreign officers to reorganize the *gendarmerie* in Macedonia, and the appointment of two civil agents or assessors (one Austrian and one Russian) to accompany the inspector-general of Macedonia on his tours, to direct his attention to the needs of the Christian population, to report to him the abuses of local authorities and to keep the two governments informed of important occurrences in the province. Immediately after the announcement of the Porte's acceptance of the plan of reform, the governments of Austria and Russia began negotiations with the other

powers with a view to the establishment of an international administration in Macedonia along the lines observed in the present government of Crete. The Italian General de Giorgio was appointed to reorganize the *gendarmerie* in accordance with the reform scheme, and the Austrian and Russian consuls-general were charged with the duties of civil agents. In view of the disinclination of the Porte to permit the reorganization of the *gendarmerie* with European officers, the Austrian and Russian governments declared in March that they purposed to resort to force if necessary to carry out the reforms. The other powers concerned have given cordial support to the Austro-Russian policy.

AMERICAN INTERNATIONAL RELATIONS. — Shortly after the revolution of November 3 in **Panama** and its secession from Colombia (see last RECORD, p. 750), it became known that the government of the United States had, on November 2, directed the commanders of the "Nashville" and the "Marblehead," stationed at Colon and Acapulco respectively, to prevent the landing of Colombian troops for the purpose of suppressing the expected uprising. This action was based ostensibly on the right of the United States, under article 35 of its treaty of 1846 with Colombia, to maintain free and uninterrupted transit across the Isthmus. On November 6 the United States consul at Panama was authorized to enter into relations with the provisional government whenever it should be sufficiently established. On November 13 the President received M. Bunau-Varilla as minister from the new republic; and on November 18 a treaty was concluded at Washington by which the United States undertook to guarantee the independence of Panama. The government of Colombia protested against these several steps as unduly hasty, and even charged that the United States had encouraged and aided the revolutionists in their action. On November 7 Colombia asked permission of the government of the United States to land troops for the purpose of maintaining the integrity of her territory, but the request was refused. The Colombian government then despatched General Rafael Reyes to the United States as a special envoy to endeavor to induce the United States government to recede from its position with regard to Panama. General Reyes reached Washington early in December, was cordially received by the President, and is reported to have offered on behalf of Colombia a free canal concession to the United States, provided his government were allowed to employ force to reassert its sovereignty over Panama. The Secretary of State replied that the Panama affair was a closed incident and that "the department was unable to regard the complaints of Colombia as having any valid foundation." The **Hay-Varilla** treaty, which was signed at Washington November 18, was sent to Panama early in December, was promptly ratified by the Junta without change, and was returned to the United States with unusual despatch. It was at once laid before the Senate and was referred to the committee on foreign relations. On January 18 it was reported

from the committee with three unimportant amendments, which were subsequently dropped to avoid the necessity of sending the treaty again to Panama. During the debates in the Senate various resolutions were proposed by members of the Democratic opposition. The two most notable of these were the Bacon resolution, providing for payment by the United States to Colombia of a pecuniary indemnity for the loss of her territory, and the Culberson resolution, calling upon the President to lay before the Senate all papers relating to the controversy over Panama. After the addition of a clause restricting the call to information the disclosure of which was not deemed incompatible with the public interest, the Culberson resolution was adopted. After rejecting the Bacon resolution, the Senate on February 23 ratified the treaty without amendment by a vote of 66 to 14. All the negative votes were Democratic, but fourteen members of that party voted for the treaty, several Southern legislatures having instructed their senators to vote in favor of ratification. On February 26 ratifications were formally exchanged and a proclamation issued declaring the treaty in force. (For the terms of the treaty see *ISTHMIAN CANAL*.) — Incidents in the relations of the United States with Cuba were the ratification on March 22 of the treaty of May 22, 1903, embodying the provisions of the Platt amendment (see *RECORDS* of June, 1901, p. 373, and December, 1903, p. 724); the approval by Congress of the reciprocity treaty between the United States and Cuba (see *RECORDS* for December, 1902, p. 721, and June, 1903, p. 357); and the lapse of the treaty for recognizing the title of Cuba to the Isle of Pines (last *RECORD*, p. 724). The latter convention was opposed in the Senate on the ground that it did not properly safeguard the interests of citizens of the United States who had taken up their residence in the island and acquired property there. Chiefly through the efforts of Senator Penrose action was postponed until the time limit fixed for ratification had passed. Early in March a new treaty was signed by Secretary Hay and the Cuban minister which provides fuller guarantees for the protection of American interests in the island. During the consideration of this treaty in the Senate, the House of Representatives adopted a resolution instructing its judiciary committee to inquire whether the Senate had authority to ratify, without the approval of the House, a treaty which involved a cession of territory. — In April it was announced that the British government had given notice to the government of *Nicaragua* that it proposed to hold the latter government to a closer observance of the treaty of 1860, by which Nicaragua agreed, in consideration of the withdrawal of the British protectorate, to grant the Mosquito Indians certain rights of local autonomy. — On February 23 the decision of the Hague Tribunal was announced concerning the question of preferential treatment in the collection of claims growing out of the revolution in *Venezuela* (see *RECORDS* of June and December, 1903, pp. 383 and 751). The tribunal decided in favor of the claims of Great Britain,

Germany and Italy to preference over other creditors, and entrusted to the United States the duty, not, as has been stated in the press, of enforcing the award, but of attending to the payment by each party of its share of the costs of the arbitration proceedings. — On April 15 Don Cecilio Baez was received by the President as the first minister accredited by the government of **Paraguay** to the government of the United States. — Noteworthy events affecting the relations of the United States with **China** were the ratification by the Senate on December 18 of the commercial treaty concluded October 8 (see last RECORD, p. 723) and the denunciation by the Chinese government of the exclusion treaty which expires December 7, 1904. **New treaties** negotiated were: an extradition treaty with Holland, a naturalization treaty with Hayti, commercial treaties with Abyssinia and Zanzibar, and a treaty with France, extending to Tunis and other French protectorates the application of all the existing treaties between France and the United States. — **Anglo-American relations** since the settlement of the Alaska boundary controversy have been marked by unusual cordiality. In February an amicable settlement of the dispute concerning the ownership of the North Borneo Islands was reached, the United States conceding the British claim (see last RECORD, p. 724). — In the relations of the United States with **Turkey** an episode which attracted momentary attention was the action of the American consul at Alexandretta in hauling down the flag and abandoning his post in December, in consequence of an assault made upon him by the local police. Due apology was made by the Turkish government and the consul returned to his post. — At the outbreak of the Russo-Japanese war President Roosevelt issued a lengthy and detailed **proclamation of neutrality**; and he subsequently issued an order in which he warned all officials of the government to abstain from either action or speech which could cause irritation to either of the belligerents, and directed that due consideration be given not only to the rights but to the susceptibilities of the nations concerned.

II. THE UNITED STATES.

CONGRESS. — In pursuance of the purpose for which the President called Congress together in extra session (see last RECORD, p. 728) the House of Representatives on November 19 passed the bill for putting into effect the **reciprocity convention with Cuba** (see RECORDS of June, 1902, p. 348; Dec., 1902, p. 721; and June, 1903, p. 357). The final vote on the passage of the bill stood 335 ayes to 21 nays, the minority consisting mainly of Republicans from Minnesota and Michigan and Democrats from Louisiana and Texas. The amendments proposed by the Democratic leaders (see last RECORD, p. 728) were rejected. In the Senate it was unanimously agreed that the Cuban reciprocity bill should not be taken up at the extra session, and December 16 was fixed

as the date on which the final vote should be taken. Having reached this conclusion the Senate leaders demanded an adjournment of the extra session. The House leaders took the position that courtesy to the President required that Congress should perform in the extra session the duty for which that session had been called, and therefore refused to consent to an adjournment. The Senate manifested some indignation at the action of the House, and the Speaker and even the President were denounced by Senators of both parties who resented the attempt to dictate to the Senate its course of action. The House rejoined that the attempt at dictation came from the Senate and refused to recede from its position. Accordingly both branches of Congress kept up perfunctory sessions until the opening of the regular session on December 7. — The merging of the extra session into the regular session raised the question of whether, for the purposes of appointment, a recess could be construed to have existed between the two sessions. Although no appreciable lapse of time occurred the President assumed the existence of a recess, and sent to the Senate the nominations of General Leonard Wood (see INTERNAL ADMINISTRATION) and 167 other army officers as **recess appointments**. This action of the President was the subject of widespread popular comment and a good deal of criticism in Congress, but was upheld by a ruling of the controller of the Treasury. — The **President's message** at the opening of the regular session gave most prominence to praise of the new Department of Labor and Commerce and to a review of the relations of the United States with Colombia and Panama (see INTERNATIONAL RELATIONS above), much space being devoted to a defense of the policy pursued by the administration. Extended reference was made to the various department scandals (see INTERNAL ADMINISTRATION below), naturalization frauds, the increase of immigration, the state of the finances, the condition of the insular dependencies, the settlement of the Alaska boundary controversy, the new army organization, relations with China and Turkey, irrigation and forest preservation. A commission to investigate the condition and needs of the merchant marine was recommended, as were also a revision of the public land laws, an extension of the classified civil service and the bestowal of authority upon the Treasury to deposit the customs receipts in the national banks. The probable early disappearance of the surplus was announced and strict economy in all departments was recommended. — On December 16, the Senate passed the Cuban reciprocity bill by a vote of 57 to 18, one Republican, Bard of California, voting in the negative and seven Democrats voting in favor of the measure. An incident of the debate on the Cuban bill was the adoption by the Democratic caucus of a resolution making decisions of the caucus, when reached by a two-thirds majority, binding on all members, save in certain cases specially excepted from the rule. The greater part of December, January and a part of February were given up to the discussion of relations with Colombia and of the Panama

canal treaty (see *INTERNATIONAL RELATIONS* and *ISTHMIAN CANAL*). Next to these questions the *general appropriation bills* occupied the larger part of the time of Congress. The naval appropriation bill carried \$97,000,000 and provided for the construction of one battleship and two first class cruisers, each to cost \$4,400,000. An addition of 3,000 men to the personnel of the navy was also authorized. The army appropriation bill carried \$75,000,000, the fortification bill \$7,963,192, and the pension bill \$137,000,000. While the legislative appropriation bill was under consideration, the House in committee of the whole after a general denunciation of the merit system struck out the paragraph for the maintenance of the Civil Service Commission. When the bill was reported, however, the paragraph was restored. An item in the urgency deficiency bill provided for a loan of \$4,600,000 to the Louisiana Purchase Exposition. By separate bills \$475,000 were appropriated for the Lewis and Clarke Exposition to be held at Portland, Oregon, in 1905, and \$250,000 for the extermination of the cotton boll weevil. The total estimated appropriations were \$682,773,000, as against \$753,058,000 for the preceding year. The principal items of increase were on account of the navy and the post office, the additional amounts being \$16,000,000 and \$19,000,000. The revenues for the forthcoming year are estimated at \$704,000,000.—An important measure affecting the inhabitants of the *Philippines* was passed in April. It extends the application of the navigation laws of the United States to the Philippines and prohibits under penalty of forfeiture after July 1, 1906, the transportation in any but American vessels of any merchandise, between ports of the United States and the Philippines. Another measure affecting the Philippines is designed to encourage railroad building in the islands and offers a guarantee of five per cent on the capital invested to any company undertaking the construction of railroads in the islands. For the purposes of municipal improvements it also authorizes the issue of \$5,000,000 in bonds.—On January 20, the House, by a vote of 201 to 68, passed the so-called Hepburn pure food bill which forbade the manufacture and sale in the territories and the District of Columbia of certain foods and drugs which do not possess a certain standard of purity and strength, and forbade their transportation in interstate commerce. The Senate, however, took no action on this measure. On April 19 a bill passed the House by a strict party vote of 147 to 104, providing for the admission to the Union of Arizona and New Mexico as a single state under the name of Arizona; and of Oklahoma and the Indian Territory under the name of Oklahoma. Consideration of this measure by the Senate was postponed until the following session. Affecting the foreign relations of the United States was the adoption by both houses of a resolution authorizing the President to open negotiations with Great Britain for a revision of the joint regulations for the protection of the fur seals in the North Pacific Ocean and in the Bering Sea; also a resolution inviting the Interparlia-

mentary Union for International Arbitration to hold its next annual meeting at St. Louis, and appropriating \$50,000 for the expenses of the meeting. — Bills favorably reported by Senate committees were: a bill to protect the President by imposing the death penalty upon any person wilfully killing the chief executive or any official entitled to succeed him; a bill to establish at the Ellis Island immigration station a bureau of information; a bill to place an inspector and a surgeon at each of the principal foreign ports from which immigrants for the United States embark; and a bill to repeal the timber and stone public land act. Reported favorably by House committees were: a bill to create a merchant marine commission; a bill granting to the states police power over original packages of liquor imported from without their limits; a bill authorizing the President to negotiate with certain European powers to secure equality of treatment of Jewish citizens while traveling abroad on American passports; and a resolution recommending the impeachment of Charles Swayne, federal district judge of Florida, for corruption, absenteeism, incompetency and the wasting of the assets of bankrupts. Important bills affecting labor which were the subject of prolonged discussion in committee were: a bill to limit the use of the injunction in labor disputes, a bill to create a permanent arbitration board to settle labor disputes affecting interstate commerce, and a bill to extend the application of the eight-hour law. The eight-hour bill was referred to the Secretary of Commerce and Labor for investigation and report, and the injunction bill was postponed until the following session. — Senator Burton of Kansas was convicted by the United States district court at St. Louis of accepting pay from a company of questionable character for the use of his influence with the Post-Office Department to prevent the issue of a fraud order against the company and was sentenced to imprisonment for six months. Senator Dietrich of Nebraska was tried on the charge of bribery in connection with a post-office appointment, but was not convicted. — The consideration by the Senate Committee on elections of the case of Reed Smoot, Senator elect from Utah, extended into an investigation of the attitude of the Mormon church and the practice of leading Mormons in the matter of polygamy, and excited great popular interest. — Senator Hanna of Ohio died in February and Representative Dick was elected as his successor. Representative Shafroth of Colorado voluntarily relinquished his seat upon discovering that his election had been accomplished by fraudulent means. — Congress adjourned April 29, the legislative output for the session being 1,100 measures, of which less than 150 were public acts. (See also INTERNAL ADMINISTRATION, ISTHMIAN CANAL, DEPENDENCIES and TRUST QUESTION.)

INTERNAL ADMINISTRATION. — The investigation of the **frauds in the postal service** (see last RECORD, p. 726) has continued to excite general interest. The report of Mr. Bristow, fourth assistant postmaster-general, which was made public November 29, showed the

existence of a widespread conspiracy to defraud the government. The report estimated the losses at several millions of dollars, the conspirators' share of the booty being between \$300,000 and \$400,000. In consequence of these discoveries, four officers of the government resigned, fourteen were removed and forty-four indictments were found. On December 16 the results of the investigations of Messrs. Conrad and Bonaparte, special counsel for the government, were announced. Their report confirmed the charges of S. W. Tulloch, a former employee in the Washington post-office, that official pay-rolls had been falsified for the purpose of rewarding favorites; it placed the responsibility for the frauds upon a number of high officials, including a former postmaster-general; and asserted that the frauds mentioned had extended back for a period of three years. In January, ex-Congressman Driggs of Brooklyn was convicted in the United States circuit court of having accepted \$12,500 from a manufacturing concern for using his influence to secure a contract for cash registers, a part of this sum having been paid to the superintendent of salaries and allowances in the Post-Office Department. Mr. Driggs was sentenced to prison for a nominal term and to pay a fine of \$10,000. On February 26 an ex-superintendent of the rural free-delivery service and three other individuals were convicted of conspiracy to defraud the government in postal contracts. Heavy sentences were imposed upon them. — The report of an investigation undertaken by the House committee on post-offices was made public early in March. It mentioned by name 140 senators and representatives as guilty of improprieties in using their influence with officials of the department to secure increases in the salaries of postmasters, additional clerk hire and advantageous leases of buildings for postal purposes. The reading of the report in the House on March 7, created a sensation and evoked from the members whose names appeared on the list angry denunciations of those who were responsible for the accusations. The appointment of a special Congressional committee to investigate the charges against the accused members was demanded; a resolution to this effect was passed; and on March 12 the speaker appointed a committee of seven members under the chairmanship of Mr. McCall of Massachusetts. On April 12 the committee made its report, exonerating the accused members from the charges of improper conduct. — The report of Messrs. C. J. Bonaparte and C. R. Woodruff, who were appointed by the President to investigate the alleged **abuses and irregularities in the Indian service** (see last RECORD, p. 727), was made public on March 7. The report charged certain members of the Dawes commission with engaging in business transactions affecting the Indians which were highly improper if not corrupt, and it asserted that certain trust companies were defrauding the Indians of their lands. It recommended the early abolition of the Dawes commission, until which time its members should be prohibited from engaging in business operations in the Indian Territory. An

order to this effect was issued by the President, whereupon two of the members, Messrs. Stanley and Breckinridge, tendered their resignations. — On February 28 the report of the special commission appointed by the President to investigate the conditions in the **immigrant service** at New York (see last RECORD, p. 727) was made public. The report exonerated the immigration officials from the charges of maladministration, but asserted that the detention facilities at Ellis Island were wholly inadequate. A number of recommendations were made looking to the removal of certain features of the administration which have tended to work hardship, injustice and inconvenience to immigrants. — The commission appointed by the President on October 22, 1903, to investigate the necessity for **revision of the public land laws** of the United States, completed its labors in March. It recommended the repeal of the timber and stone act and the substitution of provisions for the sale of timber on public lands when needed for industrial purposes (see CONGRESS). — Important executive orders were issued requiring a half-hour's extra service each day on the part of all government clerks in the departments at Washington, and making eligible to graduated pensions, under the act of June 27, 1890, all surviving Federal soldiers of the Civil War who shall have reached the age of 62 years. The latter order has been the subject of much criticism: in view of the refusal of Congress to pass an act allowing a service pension it has been denounced as a usurpation of legislative authority. A resolution was adopted by the Senate calling upon the Secretary of the Interior for a copy of the order and for an estimate of the increase of pension payments under the ruling. The Secretary estimated the increase at \$5,400,000 a year. — The divisions and departments of the **army** have been rearranged. In future there are to be five divisions: the Atlantic, the Northern, the Pacific, the South-western, and that of the Philippines. The following retirements and promotions are to be noted. General Young retired as chief of staff January 9, and Lieutenant-General Chaffee was appointed as his successor. Brigadiers-General Wood, Gillespie, Bates, Randolph and Kobbe were promoted to be majors-general, and the three last mentioned were at the same time retired. The first of these promotions, that of General Leonard Wood, aroused much opposition in the Senate and was the subject of popular discussion throughout the country, it being charged that the promotion was a flagrant example of favoritism and an injustice to older officers in the service. After a prolonged investigation of General Wood's military career as well as his personal character by the Senate committee on military affairs, the appointment was confirmed by a vote of 45 to 16. — Other important **federal appointments** were those of William H. Taft of Ohio, as Secretary of War, to succeed Elihu Root, resigned; Luke E. Wright of Tennessee, as civil governor of the Philippines (see last RECORD, p. 725); Henry C. Ide of Vermont, as vice-governor of the Philippines; W. C. Forbes of Massachusetts, as a member

of the Philippines Commission; John C. Black of Illinois, as a member of the Civil Service Commission, to succeed John R. Proctor, deceased; Joseph W. Fifer of Illinois, as a member of the Interstate Commerce Commission (a reappointment); J. C. Pritchard of North Carolina as United States circuit judge for the fourth district; John Barrett of Oregon as minister to the Republic of Panama; Arthur M. Beaupré, as minister to the Argentine Republic; William L. Russell, as minister to Colombia. In March Commander George L. Dyer of the Asiatic fleet was assigned to duty as naval governor of the Island of Guam, to succeed Commander W. E. Sewell, deceased. (For Panama Canal Commissioners, see ISTHMIAN CANAL.)

THE DEPENDENCIES. — In the Philippines the negotiations for the purchase of the friars' lands (see RECORDS of December, 1902, p. 723, and June, 1903, p. 359) were brought to a successful conclusion on December 22. Under the terms agreed upon, all the agricultural lands of the friars except 10,000 acres are transferred to the government of the Philippines in consideration of a cash payment of \$7,239,000. It is announced to be the policy of the government to sell the lands thus acquired — about 400,000 acres — as far as possible in small holdings and at low rates, preference being given to the present occupants. The proceeds of the sales are to be turned into the insular treasury and to be applied to the establishment of churches, schools, and charitable institutions. The vexatious problem of the removal of the friars has solved itself by their voluntary withdrawal: it is estimated that not more than 200 still remain in the islands. Meantime the Americanization of the Roman Catholic church in the island is proceeding apace. The annual report of the Philippines Commission was made public on February 1. It recommended that the tariff on sugar and tobacco imported into the United States from the Philippines be reduced to not more than 25 per cent of the rates imposed by the Dingley act; that the commission be authorized to issue bonds for permanent improvements to an amount not exceeding \$5,000,000; that the commission be invested with the control of commerce among the islands of the archipelago; that the law which exempts the Philippines from the application of the United States laws concerning the coasting trade be renewed; that the commission be empowered to encourage the investment of capital in the construction of railroads by a guaranty of income not exceeding four per cent annually on the amount invested; that the amount of land which corporations shall be allowed to hold be increased from 2,500 to 25,000 acres; and that the mining laws be amended in several particulars. With regard to the general condition of the Philippines, the commission reported that the distress caused by crop failures, the cholera epidemic and the rinderpest among the live stock (see RECORD of June, 1903, p. 358) has largely disappeared; that ladronism has almost ceased; that the facilities for education have been multiplied and school attendance largely increased;

and that the economic and industrial development of the islands requires the construction of more railroads. A formal effort was made in March by the Secretary of War to interest New York capitalists in the proposed scheme of developing the railroad facilities of the islands, but the result was not encouraging. In November a condition bordering on anarchy was reported to exist in the **Moro provinces**, chiefly on account of a new uprising of the inhabitants. In a running fight lasting five days General Wood inflicted a severe defeat upon the rebels of Jolo, killing more than three hundred of their number. On March 14 General Wood again defeated a Moro band at Catabolo, the capital of Mindanao, killing one hundred of their number and capturing a large amount of ordnance and ammunition. It having been discovered that the sultan of Sulu was implicated in the revolt of the Moros and was otherwise largely responsible for the disturbances, the United States formally notified him on March 2 that the Bates treaty of August, 1899 (see RECORD of December, 1899, p. 742), which granted a limited autonomy to the Moros and which provided official salaries for the sultan and several of the dattos should henceforth be considered as abrogated. Meantime the Philippine Commission had already promulgated a law prohibiting slavery, the practice of which in the Moro provinces was recognized by the Bates treaty. Disturbances have also occurred in Samar, and in February a lieutenant and six constabulary privates were killed by Moslem fanatics. The new governor, General Luke E. Wright, was inaugurated February 1. (For legislation affecting the Philippines, see CONGRESS.) — The legislature of **Porto Rico**, at the session which ended early in March, passed several important laws. These were: an act adopting the American system of civil procedure; an act creating a commission to negotiate a loan of from \$3,000,000 to \$5,000,000 for permanent improvements; an act increasing the rate of taxation on rum; an act establishing an educational qualification for the suffrage; an act to prevent the desecration of the American flag; and an act extending the public school system. Great educational progress is reported, but widespread business and industrial depression exists, chiefly on account of unfavorable labor conditions. Porto Rican trade with the United States continues to increase, the annual volume having risen from \$4,000,000 in 1897 to \$22,000,000 in 1903. Worthy of note was a resolution of the United States House of Representatives on February 2 extending to the resident commissioner at Washington the legislative privileges of a territorial delegate. An act of Congress affecting the educational interests of the island was passed in April providing for the bringing to the United States on government transports of 600 Porto Rican teachers to attend the various summer schools. In April the resignation of the governor of Porto Rico was announced. Winthrop Beakman was nominated as his successor. — The needs of **Alaska** have been the subject of an investigation by a Congressional committee. Various reforms are recom-

mended; among others, the creation of another judgeship for the territory, a revision of the mining laws, the repeal of the game laws and the adoption of measures for the encouragement of better transportation facilities.

THE ISTHMIAN CANAL. — The greatest of the preliminary obstacles to the construction of an interoceanic canal has been removed by the conclusion of the **Hay-Varilla treaty** with the republic of Panama (see last RECORD, p. 725; also INTERNATIONAL RELATIONS and CONGRESS above). The new treaty follows the general lines of the Hay-Herran convention with Colombia (see RECORD of June, 1903, p. 365), except that more liberal concessions are granted to the United States. A strip of territory five miles in width on each side of the canal (excepting the cities of Panama and Colon) and three marine leagues at each end, together with any other lands that may be necessary to the construction and maintenance of the canal, are ceded to the United States with full power of sovereignty over such lands. Panama further grants to the United States the use of all navigable waters outside of the canal zone so far as may be necessary or convenient for the construction, maintenance or sanitation of the canal, and also a perpetual monopoly of any existing system of communication across Panama between the Caribbean sea and the Pacific ocean. In consideration of this grant the United States agreed to guarantee and maintain the independence of Panama and to pay its government \$10,000,000 in cash and an annuity of \$250,000 beginning nine years after the date of the ratification of the treaty. — Shortly after the ratification of the treaty the government of Colombia instituted suit in a French court, the first tribunal of the Seine, to restrain the Panama Canal Company from transferring its franchises and other property to the United States, both on the ground of Colombia's interest as a shareholder in the company (Colombia owns 50,000 of the 650,000 shares) and on the ground that the company could not transfer its franchises and property without the sovereign consent of Colombia. On March 31 the court decided against the contention of Colombia. The last of the obstacles in the way of the transfer to the United States of the legal title to the property of the Panama Canal Company having been removed, agents of the Department of Justice were dispatched to Paris to make final arrangements for the transfer, and these were completed on April 23. — On February 29 the President sent to the Senate the names of the **members of the Commission** charged with the construction of the canal. They are: Chairman, Rear Admiral John G. Walker, District of Columbia; Major-General George W. Davis, District of Columbia; William Barclay Parsons, New York; William H. Burr, New York; Benjamin M. Harrod, Louisiana; Carl Ewald Grunsky, California; Frank J. Hecker, Michigan. On March 8 the President gave the commissioners their instructions and on March 29 they sailed for Panama, to make arrangements for beginning the preliminary work of sanitation and the

erection of the necessary buildings. On March 3 the Secretary of the Treasury issued a call upon the depository banks for twenty per cent of their holdings (aggregating about \$30,000,000) with which to meet payments on account of the Panama Canal. On April 21 the House passed unanimously a bill for the **government of the canal zone**. It is identical with the act of 1803 drafted by Jefferson for the government of the Louisiana Territory and vests full power of government in the President until the expiration of the Fifty-eighth Congress. The Senate passed a bill much more comprehensive in its nature, but finally accepted the House bill.

THE FEDERAL JUDICIARY. — In the case of *South Dakota v. North Carolina*, a suit against the latter state for the payment of certain repudiated bonds which had been assigned to the plaintiff state by an individual owner, the Supreme Court held that it had jurisdiction, awarded the judgment sued for and decreed that payment should be made by January 1, 1905. — In the case of *Gonzales v. Williams*, decided January 4, the Supreme Court held that citizens of Porto Rico are not aliens to the United States and therefore cannot be excluded as such from admission to the mainland of the United States. This decision overruled the opinion of the circuit court that the plaintiff was an alien in the sense of the Immigration Act of 1891, which denies admission to aliens likely to become public charges. In the case of *Royal Insurance Company v. Ruperto Martin*, decided January 11, the Supreme Court held that the act of 1900 establishing a civil government for Porto Rico allows appeals to be taken directly from the United States district court for Porto Rico to the Supreme Court without hearing by intermediate tribunals. — A decision affecting the rights of publishers was rendered by the Supreme Court on April 11, holding that books issued periodically cannot be sent through the mails as second-class matter under the name of periodicals. — In the case of *Butterfield v. Stranahan*, decided February 23, the Supreme Court upheld the power of Congress to prohibit the importation of tea not showing a certain standard of purity. A decision affecting the administration of the customs service was that rendered in the "rupee case," in which the Supreme Court held that in estimating the value of the Indian rupee for customs purposes the general board of appraisers and not the Secretary of the Treasury is the final authority. — A case that aroused considerable popular interest was that of John Turner, an English anarchist, who was detained upon his arrival at the New York immigrant station in October last and subsequently ordered to be deported. His petition for a writ of *habeas corpus* being denied by a United States circuit court, he appealed to the Supreme Court, and on February 29 an order was made for his release on bail. (For the decision of the Supreme Court in the Northern Securities case, see **THE TRUST QUESTION**. See also **LABOR AND CAPITAL** and **NEGRO PROBLEM**.)

THE TRUST QUESTION. — On March 14 the United States Supreme Court rendered its decision in the **Northern Securities Case**. (For the history of this case see RECORDS of June, 1902, p. 354; December, 1902, p. 727; June, 1903, p. 367; and December, 1903, p. 733.) The oral arguments in the case were heard on December 14 and 15. The defendants attempted to show that the purpose of the Northern Securities Company in acquiring the stock of the Great Northern and Northern Pacific railroads was not to restrain trade and commerce among the states but to create and enlarge it; that the acquisition by the Northern Securities Company of a majority of the shares of stock of the two railroads was not prohibited by the Anti-Trust Act of 1890; and that if the said act did prohibit such acquisition it was unconstitutional, since Congress has no power to regulate the transfer and ownership of shares of stock in state corporations. By a majority of five to four the Supreme Court affirmed the decision of the circuit court of appeals of April 9, 1903 (see RECORD of June, 1903, p. 367) which had held that the acquisition of the stock of the two railroad companies was in restraint of trade and commerce among the states and which had enjoined both companies from transferring their stock to the Securities Company. The majority opinion, which was delivered by Justice Harlan, conceded that the purpose of the merger might have been the creation and promotion of trade among the states and that the motives of the organizers might have been unselfish, but held that, inasmuch as a combination had been formed which possessed the power to suppress competition and restrain trade and commerce, it was a violation of the act of 1890. The opinion also affirmed the doctrine of the *Trans-Missouri freight* case that the Sherman act is not limited in its application to contracts and combinations in unreasonable restraint of trade, but applies to all such contracts whether reasonable or unreasonable. Justice Brewer, while concurring with the majority in its decision as to the illegality of the merger, dissented from that part of the opinion which held that the Sherman act applies equally to reasonable and to unreasonable restraints. Chief Justice Fuller and Justices White, Peckham and Holmes dissented from the decision of the majority. Their views were expressed in two separate opinions. Justice Holmes protested against the decision of the majority on the ground that it interfered "with the exercise of powers incidental to the ownership of property," and Justice White declared that mere ownership of stock in a state corporation could never be construed as an interference with interstate commerce. On April 11 the Supreme Court dismissed the suit brought by the state of Minnesota against the Northern Securities Company on the ground of lack of jurisdiction. — In the case of *Montague v. Lowry*, decided in February, the Supreme Court held that an agreement of Eastern manufacturers of grates, mantels and tiles to sell only to certain Western dealers at a particular price and to charge others a higher price was in conflict with the Sherman act. — In April the Supreme

Court decided, in the case of the anthracite coal-carrying railroads of Pennsylvania, that the Interstate Commerce Commission had power to compel the defendants to produce certain contracts and other papers relating to their traffic agreements. — An important decision under the Anti-Trust Act was rendered by the United States circuit court of appeals at Cincinnati on December 9, in the case of *Atlanta v. Chattanooga Pipe and Foundry Works*. By this decision the City of Atlanta was awarded triple damages against the pipe trust on the ground that by concerted bidding of its members it secured a contract for supplying pipe at rates considerably above the market price. — In response to a resolution of the House of Representatives, calling for information regarding the use made of the \$500,000 appropriated by Congress at the last session for prosecuting offenders against the federal anti-trust statutes (see RECORD of June, 1903, p. 367), the Attorney-General reported on January 13 that \$25,985 of the appropriation had been expended, the greater part of which was applied to the prosecution of the suits against the Northern Securities Company and against the beef trust (see last RECORD, p. 733). He further reported that injunction suits were proceeding in equity under the Anti-Trust Act against fourteen railroad companies, and that several other suits against manufacturers' combinations were pending. By act of Congress the Attorney-General was authorized to employ the unexpended balance in the prosecution of further violations of the federal anti-trust statutes. — A widely discussed anti-trust measure is the **Foraker Amendment** recently introduced in the Senate, which proposes to abolish that part of the Interstate Commerce Act which applies to foreign commerce and to restrict the application of the Sherman act to contracts which are in unreasonable restraint of trade. In response to a resolution of the House of Representatives passed in March the Department of Commerce and Labor has begun an investigation of the operations of the beef trust.

LABOR AND CAPITAL — **A strike of coal miners in Colorado** began early in November and lasted about five months. The miners demanded a twenty-five per cent increase of wages, an eight-hour day and the exclusive employment of union labor. These demands were refused by the operators, who, however, offered to compromise the dispute on liberal terms. The miners rejected these terms notwithstanding the advice of Mr. Mitchell, president of the United Mine Workers' Association, to the contrary. The attempt of the strikers to prevent the employment of non-union men led to disorders and violence, and on December 4 the governor placed the Cripple Creek region under martial law and adopted drastic measures to maintain the peace. Several other places, notably Victor, Telluride and Trinidad were subsequently placed under martial law, a press censorship was established, and the militia was called out and placed in control. Hundreds of armed strikers were arrested and imprisoned, several encounters between the strikers and the militia oc-

curred, a number of secret assassinations took place, and considerable mining property was destroyed by dynamite. Business in the mining districts was for a time paralyzed although, as a result of the vigorous course pursued by the governor, the mines resumed operations with non-union employees. The President, being appealed to for federal assistance, ordered General Bates to make an investigation of the troubles for the information of the government. He reported that the conditions fully justified military interference, but that the state government was able to control the situation. At the close of the period under review the mines were running to their full capacity and the strike seemed likely to fail, but the disorders still continued. — A strike of the soft coal miners of the United States was threatened in March in consequence of the failure of the joint conference of miners and operators, which met at Indianapolis March 1, to reach an agreement upon a wage scale for the ensuing year. The operators offered to renew the wage scale for two years upon the basis of a reduction of five and one-half per cent in wages, which reduction they said was made necessary by the decrease of profits. President Mitchell urged the acceptance of the terms, but the convention rejected them and threatened to strike. On March 15 the terms proposed by the operators were submitted by way of referendum to the bituminous miners (190,000 in all) of the nine states concerned and were accepted by a large majority of those voting. — The city of Chicago was afflicted with two labor strikes in November. One of these was a **strike of street-railway employees** for a small increase of wages, for the exclusive employment of union labor and for the settlement by arbitration of the questions in dispute. The railway company declared that the demands for increased pay were unjustified and that it would not submit to arbitration the workers' demand for the "closed shop." Finally a basis of compromise was agreed upon chiefly to the advantage of the company, and the strike was declared off. The other Chicago labor difficulty was a **strike of livery drivers**, which was accompanied by disgraceful interferences with funerals. — A protracted **sympathetic strike of bricklayers** was the disturbing feature of the labor situation in New York City, the bricklayers demanding recognition of the Laborers' Protective Association and the employment of none but union laborers. Important **judicial decisions affecting labor** were: a decision of the United States Supreme Court on November 30, upholding a Kansas statute which provided an eight-hour day for labor on all public works (*Atkin v. Kansas*); a decision of the New York court of appeals in the case of *People v. Lochner*, affirming the constitutionality of a statute which prescribes ten hours as the maximum working day of journeymen bakers; decisions of the appellate division of the New York supreme court affirming the constitutionality of the tenement house law and the compulsory school attendance law; a decision of the supreme court of Illinois in the case of *Mathews v. the People*, deny-

ing the constitutionality of the act of 1889 creating a free employment bureau, on the ground that the clause which forbade the furnishing of lists of applicants for employment to employers whose employees are on strike was unjust discrimination. (For federal legislation affecting labor, see CONGRESS.)

THE NEGRO PROBLEM. — During the period under review various aspects of the negro question have been the subject of discussion in Congress, in the state legislatures and in the press. In Maryland the legislature has adopted a proposed constitutional amendment, which has for its purpose the disfranchisement of the negro race. It requires as a qualification for voting ability to read any section of the state constitution and to give a reasonable explanation of the section read. Exempted from this requirement are all persons who were entitled to vote on or before January 1, 1869, or who are descendants of such persons. A law was also passed by the legislature of Maryland requiring railroads and steamboats to provide separate accommodations for colored passengers. In Mississippi a similar law was passed with regard to street railways. In the latter state was enacted also a stringent vagrancy act, directed primarily against the large increase of colored vagrants. — An attack upon negro education was made by the governor of Mississippi in a message vetoing a bill for the support of a normal school for colored teachers. In Kentucky a bill was passed prohibiting co-education of white and colored students, the measure being directed primarily against Berea College. — Several **judicial decisions** affecting the rights of colored citizens have been rendered by the federal courts. In the case of *Giles v. Board of Registrars* (see RECORD of June, 1903, p. 364) in which the suffrage provisions of the Alabama constitution were attacked as being in violation of the federal constitution, the Supreme Court of the United States decided that it had no jurisdiction, because the federal question had not been properly raised. In *Smith v. State* (77 S. W. 453) the district court of the United States for the district of Texas held that in a case where all the jury commissioners were white and all the jurors selected were of the same color, although a fourth of the population were negroes, a colored defendant was denied equal protection of the laws. — In several parts of the South, notably in Mississippi and Arkansas, there has been a recrudescence of the **White Cap** movement against negroes. In Arkansas three "white cappers" were convicted and punished. **Peonage cases** have been reported in Georgia, Louisiana and Mississippi, and a number of white planters have been indicted by federal grand juries. — **Race Riots** have occurred in Texas and Arkansas; in the latter state thirteen negroes were reported to have been killed. — During the period under review some thirty odd negroes were reported to have been lynched, all the cases with one exception occurring in the southern states. All the victims were males except two. The majority of the offenses were murder of white men, the rest being assaults

upon white women. The lynching parties were composed of white persons and the victims were black in every case except one. In five or six cases the method of punishment was burning at the stake, which in two instances was accompanied by other forms of torture. In Springfield, Ohio, where a negro who had murdered a police officer was forcibly taken from the jail by a large mob and hanged to a telegraph pole, the affair was followed by serious disorders, which led the governor to call out eight companies of militia to maintain the peace. Worthy of record is the prompt and vigorous action of the governor of Mississippi, who took personal command of the troops on two different occasions and prevented the lynching of several negroes. The governor of Virginia also prevented the lynching of a negro who had committed a particularly fiendish crime upon a white woman in Roanoke. Through the efforts of the governor of Virginia a law was passed which provides that the testimony of women who have been made the victims of criminal assault need not be given in open court, but may be taken by deposition and read to the jury.

NATIONAL POLITICS. — The national committee of the Republican party met at Washington in December, selected Chicago as the place for the meeting of the Republican convention and fixed June 21 as the date. The Democratic national committee met on January 12, and decided upon St. Louis as the place and July 6 as the date for the holding of the Democratic convention. The death of Senator Hanna in February left President Roosevelt as the only Republican candidate openly and strongly supported; and as nearly one-half of the total number of delegates have been instructed for him, his nomination seems practically assured. In the Democratic ranks there has been no such preponderance of sentiment with regard to any single candidate. The movement to renominate ex-President Cleveland for a third term was checked by an announcement from him that he would not consent to be a candidate. At the same time it appeared to be the general sentiment of the party that Mr. W. J. Bryan should not be renominated. At the close of the period under review the Democratic candidates most prominently mentioned were Alton B. Parker and W. R. Hearst of New York, Parker seeming to be in the lead.

STATE LEGISLATION. — In Louisiana and Mississippi large appropriations were made for exterminating the boll weevil (see also CONGRESS). In Massachusetts an act was passed to protect playwrights. In Mississippi provision was made for a state text-book commission charged with selecting a uniform series of text-books for the public schools of the state. An important measure of the New York legislature was the "unification bill" to place the administration of all public elementary education under the control of a single commissioner. In New Jersey, besides factory and tenement house legislation, acts were passed for amending the corporation laws, for creating the office of state auditor

and for instituting a department of law. In Ohio the enactment of a uniform school law has been one of the difficult problems before the legislature. — Judicial decisions of state courts were rendered in Kansas, denying the constitutionality of the sugar bounty act of 1895, and the newspaper libel law of 1901; in Missouri, holding that an attempt to induce a member of the board of health to vote in favor of awarding a particular contract was not bribery when the board was without legal authority to let the contract (*Missouri v. Butler*); in Ohio denying the validity of the usual suicide clause in life insurance policies (*Hammer v. Aetna Company*); in Oregon, holding that the initiative and referendum amendment to the constitution is not inconsistent with a republican form of government; in Texas, holding the local option liquor law unconstitutional; in New York, upholding a statute requiring tenement house owners to substitute a different system of sewerage from that in use (*Tenement House Commissioners v. Moeschen*) and denying the liability of cities for damages on account of injuries sustained as a result of the suspension of an ordinance forbidding fireworks (*Landau v. City of New York*). — Of municipal interest was the Chicago election in favor of municipal ownership of the street railways (see last RECORD, p. 739). — For legislation on special subjects separately noted above, see TRUST QUESTION, LABOR AND CAPITAL, and NEGRO PROBLEM.

III. LATIN AMERICA.

In Cuba the event of chief importance was the election of members of Congress and of the provincial councils. A Republican majority in both houses of Congress was again secured, although the Liberals gained several seats in the lower house. The election was unexpectedly quiet, but frauds were discovered in the returns from several of the large cities. Of interest in the field of legislation was the president's veto of a bill to continue the state lottery, and a decree increasing the rates of customs duties, especially on a large number of food products. The latter measure was criticized in the United States on account of alleged discrimination against American products in favor of those of Europe. Measures were passed for the establishment of legations and consulates in Europe and for the payment of the revolutionary war bonds. (For the progress of the negotiations with the United States regarding the Isle of Pines, see INTERNATIONAL RELATIONS.) — The new republic of Panama has been recognized by most of the governments of Europe and America, and Colombia has apparently abandoned all efforts to recover her lost province (see INTERNATIONAL RELATIONS). In February a constitutional convention was held, a constitution was framed and adopted, and on February 16, the constitution was officially promulgated by the provisional government. On the same day Dr. Manuel Amador, one of the revolutionary leaders and minister of finance under the provisional

government was elected first president of the republic and was inaugurated on February 20. — In **Mexico** the question of paramount interest was that of currency reform. A committee of the national monetary commission has recommended the gradual introduction of the gold standard which, it is understood, will be adopted at an early date. Other measures affecting business interests are a new banking law, requiring banks to maintain a balance between outstanding notes and cash on hand and establishing a system of inspection to insure the maintenance of such balance; and a decree increasing the import duties on a large number of manufactured articles. — The chief political event in **Colombia** was the election on February 2 of General Rafael Reyes as president of the republic. Laws were passed, establishing as the monetary unit a gold dollar of the same metallic content as that of the United States and prohibiting the issue of paper currency, and making a considerable increase in the tariff rates on imports. (For the relations of Colombia with the United States as regards Panama, see *INTERNATIONAL RELATIONS*). — During the period under review Latin America was afflicted by the usual number of revolutions. The most noteworthy of these was the revolution in **Santo Domingo**, which has been in progress since November last. In December the government of General Wos y Gil was overthrown and was succeeded by a provisional government under General Morales. Thereupon a revolution under the leadership of one General Jiminez, a former president of Santo Domingo, broke out against the Morales government and has been in progress for several months. The United States partially recognized the provisional government of Morales on the understanding that the latter would observe all agreements concluded with the United States by previous Dominican governments. A condition amounting almost to anarchy has prevailed in the island. Several American merchant vessels and an American man-of-war were fired upon by the revolutionists, and an American naval machinist was killed. Acting under instructions from Washington, the American naval commander bombarded the town of Pajarito, a rebel stronghold, on February 11 and landed 300 marines for the purpose of punishing the insurgents and protecting American interests. In **Uruguay** also a civil war has been in progress, the effect of which has been to paralyze commerce and industry. Twelve thousand government troops have been under arms and several battles have been fought with heavy losses on both sides. — A long-standing dispute between **Chile** and **Peru** with regard to the permanent ownership of the provinces of Tacna and Arica has broken out anew on account of the threat of the Chilean congress to make the Chilean possession of them definitive (see *RECORD* of June, 1901). — An arbitration treaty has been concluded between **Bolivia** and **Peru** for the settlement of a boundary dispute.

IV. EUROPE.

GREAT BRITAIN AND IRELAND. — Mr. Chamberlain's proposed change in the fiscal policy of the empire (see last RECORD, p. 736) has continued to occupy the paramount place in British politics. During the period under review the ex-colonial secretary delivered many speeches in support of his proposals for tariff reform and succeeded in winning victories in several parliamentary by-elections in December. In January, however, he met with two notable defeats in by-elections at Norwich and Gateshead. A much discussed campaign project of Mr. Chamberlain's was the selection of an unofficial "commission" consisting of sixty or more persons, prominent in commercial and industrial pursuits, to consider the tariff question in its various aspects and recommend the basis of a protective system for the empire. In the colonies as in the United Kingdom Mr. Chamberlain's proposals have constituted the chief subject of discussion, and there, as in England, opinion is divided upon the merits of the proposed change. — **Parliament** opened on February 2. The speech from the throne referred to the unusually cordial relations existing between Great Britain and the countries of continental Europe (see INTERNATIONAL RELATIONS); reviewed the military operations in Somaliland (see AFRICA); expressed regret at the war in the East and declared the readiness of Great Britain to afford any assistance which it could "usefully render towards the promotion of a pacific solution"; referred to the Thibetan mission and the situation in the Balkans (see INTERNATIONAL RELATIONS), and alluded to the "deep concern" which the government felt on account of the cotton shortage and the increased burdens of military and naval defense. The speech announced that bills would be introduced for restricting immigration; for amending the liquor license law, the tax assessment law, the Scotch education law, the fisheries act, the labor law, the workmen's compensation act and the public health law; for regulating the hours of employment in shops; and for removing the necessity for reelection in case of acceptance of office by members of the House of Commons. In the early days of the session the **strength of the government** was put to the test by several motions brought forward by the opposition. The first of these was an amendment proposed by Mr. John Morley to the address in reply to the speech from the throne declaring that a return to protective duties, particularly if these should be imposed upon foodstuffs, would be deeply injurious to the national welfare. After a week or more of exciting debate the motion was rejected on February 15 by a vote of 327 to 276, or about half the normal government majority, thirty of the unionists and all the Irish members voting against the government. A motion to censure the government for its conduct of the South African war was defeated by a majority of 86 votes and a motion condemning the introduction of Chinese labor into the Transvaal (see

AFRICA) was rejected by a majority of fifty-one votes. After rejecting an amendment asking for important changes in the Irish Land Act (see last RECORD, p. 737) the address was agreed to on February 19. Early in the session the Irish leaders demanded home rule concessions, the amendment of the Land Act and the establishment of an Irish University; and upon the refusal of the cabinet to yield to their demands they announced their intention of joining the opposition. **The defection of the Irish members** together with the division of the Unionists has led to the general belief that a dissolution of Parliament cannot be long postponed. Among the measures which have reached an advanced state on the parliamentary calendar is a resolution adopted by the House of Commons on February 16, in favor of giving the parliamentary franchise to women. Less encouraging to the feminist movement was the decision of the House of Lords debarring women from the right to practice law. The budgetary statement for 1904-05 places the estimated expenditures at \$714,000,000 and the receipts at \$695,300,000, leaving a deficit of about \$19,000,000. \$185,000,000 of the expenditures are for the navy and \$145,000,000 for the army. The campaign against the Mad Mullah (see AFRICA), the Thibetan expedition (see INTERNATIONAL RELATIONS) and the purchase of two Chilian battleships accounts for most of the increased expenditures. In April it was announced that the government had decided to restore the duties on grain abolished last year (see RECORD of June, p. 373), and to increase the duty on tea by two pence per pound and the income tax by one penny in the pound. Both the army and navy estimates were passed by narrow majorities. An important measure which the government has undertaken to carry through Parliament provides for a comprehensive scheme of **army reform**. It is based upon the recent report of the royal commission on army reform and provides for the creation of a permanent staff to give cohesion and continuity to the defence committee; the abolition of the office of commander-in-chief and the substitution in its place of an army council of seven members; an organized system of inspection under the control of an inspector-general; the enlargement of the defence committee by the addition of a secretary, two military officers and two naval officers. Miscellaneous incidents have been the opposition of the non-conformists to the Education Act (see RECORD for December, 1902, p. 731), the release of Colonel Arthur Lynch who was sentenced to life imprisonment for treason (see RECORD of June, 1903 p. 372) and an organized movement to encourage cotton-growing in the British colonies.

THE BRITISH COLONIES AND INDIA. — In Canada measures were enacted at the last session of the Dominion parliament for the reduction of the public debt, for a second continental railroad, for subsidizing a proposed line of steamers between Canada and France, and for increasing the militia to 100,000 men. Worthy of mention was the refusal of the government to join in the protest of the premier of New Zealand

against the introduction of Chinese labor into the Transvaal (see AFRICA). Subjects of popular discussion have been Sir Wilfred Laurier's declaration, following the decision in the Alaska boundary case (see last RECORD, p. 723), that Canada should possess the full treaty-making power, and Mr. Chamberlain's fiscal proposals (see last RECORD, p. 736). (For the settlement of the Newfoundland French shore fisheries dispute, see INTERNATIONAL RELATIONS). — In Australia general elections for the commonwealth parliament were held in the latter part of December. The most striking result of the election was the success of the Labor party (state socialists) due largely to the female vote which was cast for the first time in a commonwealth election. Of the nineteen senators elected ten were Labor candidates, the whole delegation from Victoria being of that party. The ministerialists lost half their strength in the Senate and at least five seats in the House of Representatives. Taking the two houses together the strength of the several parties is as follows: ministerialists, 34; members of the opposition, 40; Labor party, 37. The demands of the Labor party include compulsory arbitration in labor disputes, Australia for the white race, an eight-hour working day, abolition of capital punishment, state monopoly of the liquor traffic, old-age pensions and various other state-socialistic schemes. Where Mr. Chamberlain's fiscal policy was made a direct issue, as in New South Wales, it was rejected by the voters. The arrival of the new governor-general, Lord Northcote, in January was made the occasion of an imposing demonstration. At the opening of the commonwealth parliament in the same month the governor-general expressed the hope that the proposed federal assumption of the state debts would be satisfactorily arranged, that a system of old-age pensions would be adopted for the entire commonwealth, and that Mr. Chamberlain's policy of preferential trade would be acceptable to the parliament. He urged that immigration be suitably encouraged, and announced that bills would be introduced for the establishment of a court of conciliation and arbitration (see last RECORD, p. 738), for the regulation of the coasting trade, for the appointment of a high commissioner at London, for the restriction of trusts and industrial combinations, for the regulation of bankruptcy and for giving aid and encouragement to various industries. In March the federal premier, Mr. Deakin, made a vigorous defense of Australia's protection policy and announced that the government was prepared to alter the schedule in the direction of preferential trade with the mother country. — A legislative measure of note was an act reducing the number of members of the New South Wales legislature from 125 to 90 members. The House of Representatives and the senate have also recorded their grave objection to the introduction of Chinese labor into the Transvaal. On April 21 the government sustained a defeat in the House of Representatives on a Labor party amendment providing for the extension of the application of the compulsory arbitration bill to state employees. The

Deakin cabinet resigned and was succeeded by a ministry headed by Mr. Watson, the leader of the Labor party. — In **New Zealand** the most important event was the enactment of a new tariff law providing for preferential trade with the mother country. The law imposes increased duties, ranging from 20 to 100 per cent, on a number of articles, and provides for reciprocity with foreign countries. The duty on tea is abolished. A protest was recorded against the introduction of Chinese labor into the Transvaal (see **AFRICA**). — In **India** the event of chief importance has been the expedition to Thibet (described above under **INTERNATIONAL RELATIONS**). Other noteworthy incidents were Lord Curzon's spectacular tour of the Persian Gulf, and the abolition of all counter-vailing duties on sugar produced in countries adhering to the Brussels convention. The financial condition is reported to be highly favorable, the estimated surplus amounting to nearly three million pounds.

France. — Of chief interest, in French politics, has been the further development of the **anti-clerical policy** of the government. In December Premier Combes introduced into the Chamber of Deputies a bill to forbid teaching by any religious order, authorized or unauthorized. It provided for the dissolution of such congregations as exist solely for the purpose of teaching and for the sequestration of their property; it provided also for the partial sequestration of the property of those congregations which are engaged in teaching, but which also maintain hospitals for the indigent. Five years were to be allowed for the complete execution of the measure. As it was estimated that approximately 3,500 schools would be affected, the bill also provided for an enlargement of the public school system at an estimated cost of \$13,000,000. The introduction of this measure was followed by one of the sharpest parliamentary struggles of recent years. It was the subject of debate in both chambers for several months. On March 15 the government met with a slight check: an amendment was adopted extending to ten years the time limit for the suppression of religious teaching. On March 21 another amendment was carried, against the wishes of the government, exempting from the operation of the law seminaries for the training of religious teachers for service in the colonies. Finally, on March 28 the original bill as amended passed the Chamber of Deputies by a vote of 316 to 269. This measure completes the anti-clerical program begun by Waldeck-Rousseau in 1901 (see previous **RECORDS**). Tension between the French government and the **Vatican** was caused by a papal address to the sacred college arraigning the government for its policy toward the clergy. This criticism was resented in government circles, and a formal protest was reported to have been sent to the papal secretary of state through the French ambassador at the Vatican. Meantime the ministry has adopted drastic measures to prevent public criticism of its policy by the clergy and others in the service of the church. The expulsion from French territory of the Abbé Delsor, an Alsatian

priest and deputy in the German Reichstag, who was to have delivered a public address at Lunéville, aroused not a little popular excitement and led to a stormy scene in the Chamber of Deputies on January 14. Interpellations concerning the expulsion were brought forward, but after a long and animated debate the action of the government was approved by a vote of 295 to 243. — The threatened ministerial crisis on account of the opposition to M. Pelletan's alleged incompetent and inefficient administration of the navy was avoided by Premier Combes's acceptance in March of the proposition to appoint a commission to inquire into the condition of the navy. Thereupon a vote of confidence was carried by a majority of eighty voices. — Other bills which have passed the Chamber of Deputies provide for railway construction in Morocco, for the appointment of a commission to inquire into the alleged complicity of certain officials in the Humbert frauds, and for the suppression of all decorations. The budget as submitted by the government was adopted without substantial change. — M. Brisson was elected to the presidency of the Chamber of Deputies to succeed M. Bourgeois. On account of dissensions among the socialist deputies, M. Jaurès failed of reelection as one of the vice-presidents. — A matter of worldwide popular interest was the decision of the revision committee to recommend a rehearing of the **Dreyfus Case** (see RECORD of December, 1898, p. 766). On March 5 the criminal branch of the Court of Cassation granted the appeal of Dreyfus and the new trial began shortly thereafter. — In February negotiations were concluded for a new treaty between France and **Siam**. The new agreement confirms and continues with certain modifications the convention of 1902 (see RECORD of December, 1902, p. 734), provides for an adjustment of the boundary between Siam and Cambodia, and secures substantial commercial advantages to France.

GERMANY. — The **Reichstag** was opened on December 3 by Chancellor von Bülow in the absence of the emperor. All of the socialists, 81 in number, were conspicuously absent. The speech from the throne, which was read by the chancellor, announced that measures would be introduced for the rearrangement of the financial relations between the empire and the states and for the continuance of the present army footing without material increase of expenditure until April, 1905. It was also announced that the government would continue its policy of enacting social legislation for the benefit of the poor, that the "most-favored nation" agreement with Great Britain would be renewed for another year, that the bourse law would be reformed and that the Reichstag would be asked to aid in the construction of a railroad in German East Africa. On the second day of the session, the Reichstag was organized by the reelection of Count von Ballestrem as president, over Herr Singer, the socialist candidate, who received 68 votes. The greater part of the session up to the close of the period under review has been taken up with the discussion of the budget, financial reforms and army

measures. The budgetary statement revealed an unsatisfactory condition of the imperial finances, chiefly on account of increased expenditures and general business depression. It was for this reason that a contemplated increase of the army footing was postponed. It was announced that recourse would be had to a fresh issue of treasury bonds and to the refunding of an old issue of 4 per cents (40,000,000 marks) into 3½ per cents. The financial reform bill, which has reached an advanced stage on the calendar, abolishes (except in the case of excises on spirits) the system by which certain imperial excises and duties are credited to the individual states as against the contributions (*Matrikularbeiträge*) due from them to the empire — an arrangement which has proved unsatisfactory. A measure of importance which the government submitted to the Reichstag was a bill to provide for the indemnification of persons who have suffered imprisonment while awaiting trial and who are subsequently acquitted of the charges against them. Bills have also been submitted to establish courts of arbitration for settling differences between merchants and their employees and to provide supplementary military pensions. A measure which excited great popular interest and elicited not a little protest was the repeal of the anti-Jesuit law of 1872 which prohibited Jesuits from residing in Germany. Negotiations have been in progress some months for the renewal of the commercial treaties with Russia and Italy. In March the basis of an agreement with Italy was reached but an early agreement with Russia seems improbable. — In consequence of the revolt of the Hereros in German Southwest Africa (see AFRICA), \$705,300 were appropriated in January for the dispatch of reinforcements. In March, supplementary bills were submitted, appropriating \$1,675,000 to defray the expenses of suppressing the revolt and to relieve the settlers who had sustained losses in consequence of the uprising. — The elections for the Prussian Landtag resulted in the return of 148 Conservatives, 56 Independent Conservatives, 97 Centrists, 110 Liberals of three different shades of opinion, and 13 Poles and Danes. For the first time the socialists entered actively into the campaign; but although in the last Reichstag elections they cast forty per cent of the votes (see last RECORD, p. 741), on account of the disproportionate influence which the Prussian election laws ("three-class system") give to those paying higher taxes they were unable to elect a single member to the Landtag. — In Saxony the government has undertaken to pass a bill providing for an extensive scheme of electoral reform but retaining the three-class system. — An incident of industrial interest has been the formation of a steel combination embracing twenty-six large steel manufacturing concerns.

AUSTRIA-HUNGARY. — In both portions of the dual monarchy the period under review has been characterized by the continuance of obstructionist tactics in the parliaments. The termination of the crisis in the Hungarian Diet, as reported in the last RECORD (p. 742), proved

to be only a truce, and the opponents of the military measures proposed by the government soon renewed the contest. On December 4, in consideration of certain promised concessions from the government, the opposition again decided, by a vote of 46 to 28, to cease obstruction; but after a brief interval the struggle broke out afresh. Disorderly scenes in the chamber were of frequent occurrence and legislative procedure was practically blocked. Appeals of the premier to the obstructionists to allow the recruiting bill to pass and threats of drastic measures to end obstruction were in vain. Finally, on March 10, after a crisis lasting fifteen months, the obstructionists announced that they were compelled by failing strength to abandon the contest, and that they would cease to oppose the recruiting bill and allow the business of parliament to proceed. A few days later the recruiting bill, the supply bill and a bill of indemnity covering the period during which the government was carried on without appropriations, were passed without further hindrance. The announcement by the premier of his intention to introduce a measure for the reform of the suffrage was received with approval on all sides. — The **Austrian Reichsrath** opened on November 17. The Czechs, who had been awaiting the end of the Hungarian crisis with the intention of demanding for Bohemia such national and linguistic concessions as should be granted to the Magyars, at once announced their program and entered upon a policy of obstruction to secure recognition of their demands. These were stated to be: the federalization of the Hapsburg monarchy; the equality of the Czech and German languages in the central administration and public life of Bohemia; the establishment of a second Czech university in Moravia and the creation of technical and secondary schools in various other provinces for the benefit of the Czech population; the development of the Czech national spirit; the reform of the electoral system; and the extended use of the Czech language in the army. The government was powerless to overcome the Czech obstruction, and at the close of this RECORD neither the recruiting bill nor any other legislation of importance had been enacted, nor had indemnity been granted for last year's expenditures. The budgetary statement of the finance minister made at the opening of the Reichsrath showed, by means of rather sanguine estimates, a small surplus. A loan of 231,000,000 crowns is proposed, to be used chiefly for public works. — On December 15 the Austro-Hungarian Delegations met at Vienna. The emperor, in the speech from the throne, announced his firm determination to maintain the Triple Alliance and declared that Austria and Russia were equally resolved to maintain peace and the *status quo* in the Balkans. (See INTERNATIONAL RELATIONS.)

RUSSIA. — The event which has overshadowed all others in Russia was the outbreak of the war with Japan in February (see INTERNATIONAL RELATIONS). Since that time the activities of the imperial government have been directed chiefly to devising ways and means for pro-

secuting hostilities. General Sukaroff was appointed minister of war to succeed General Kuropatkin, who was placed at the head of the army in the East; and M. Kokovzoff was appointed minister of finance to succeed M. Pleske, in spite of great pressure brought to bear upon the czar to reinstate M. de Witte (see last RECORD, p. 742). The budgetary statement for 1904 estimates the ordinary receipts at \$990,046,000 and the expenditures at \$983,229,125. The increased burdens imposed by the war with Japan have necessitated heavy loans and new taxes. — Noteworthy in the internal affairs of Russia was the completion by Minister von Plehve of a scheme for reforms in the condition of the **peasantry**, in accordance with the manifestos of the Czar issued last March (see RECORD of June, 1903, p. 377). The preservation of the peasantry as a class distinct and separate from other classes, the retention of the commune and the inalienability of peasant lands are features of the existing system which are to remain untouched. The proposed scheme of reform is to be submitted to committees in the various provinces for further discussion and elaboration. Meantime other measures have passed beyond the stage of projects. A law has been published determining the competence and regulating the procedure of the cantonal or peasants' courts and specifying the penalties that may be inflicted. Corporal punishment is retained, but women, men over 35 years of age, persons who have been educated in district schools and those who have been employed for more than three years in the public service are exempted from this penalty. On February 19 a decree was issued abolishing the censorship upon all news and other telegrams intended to be sent abroad. The internal censorship, however, is retained. — With a view to a revision of the laws relating to **Jews**, a circular was sent to the governors of the fifteen provinces in which Jews are allowed to reside, calling for reports from these officials upon the difficulties experienced in administering the laws in question. The majority of the replies were distinctly unfavorable to the Jews, and some of the reports recommended the expulsion of all Jews from the provinces in which they are now allowed to live. A commission under the presidency of Prince Obolensky, formerly governor of Kharkoff, has been appointed to consider the recommendations of the various governors and to propose such alterations in the laws as it may see fit. In February it was reported that the commission had decided to establish greater restrictions upon the Jews in Russian Poland. In December a decree was issued forbidding American Jews to enter Russia hereafter without a special permit from the minister of the interior. In December and March the persons charged with complicity in the Kishineff massacres of last year (see RECORD of June, 1903, p. 378) were put on trial. The first series of trials, in which thirty-seven persons were arraigned, ended on December 22 and resulted in the conviction of twenty-five and the acquittal of twelve of the accused. The second trials, which ended March 11, resulted in the

acquittal of thirty-six and the conviction of fifteen. Four of the accused were convicted of murder and sentenced to terms of imprisonment ranging from four to twenty years. The others were convicted of rioting and received light sentences, ranging from four months to two years' imprisonment. — Of scarcely less interest have been the trials before a military tribunal at St. Petersburg of seven persons charged with complicity in the murder of various high officials. Three of the accused were condemned to death, three were sentenced to four years' penal servitude, and one, a female student, to three months' imprisonment. — **Serious disturbances in the Caucasus**, amounting almost to open rebellion, have occurred, chiefly owing to the confiscation of the property of the Armenian church (see last RECORD, p. 743), and symptoms of increasing unrest and disaffection have been manifest in Southeast Russia. — The Russianizing of **Finland** has continued without interruption. On December 17 a ukase was issued by the Czar practically depriving the duchy of all its remaining rights of municipal and communal self-government. It empowers the provincial governors to quash the election of all persons politically objectionable to the government and to appoint others in their stead. On December 24 the governor-general was empowered by another order to remove administrative officials and school teachers without a hearing. Banishment of prominent Finns has continued, the total number up to the present amounting to forty-five. Notice was given in December that the Finnish diet would be permitted to assemble in 1904 only in case the governor-general should report that the duchy was satisfactorily pacified.

ITALY. — At the opening of **parliament** on December 1, Premier Giolitti announced the program of the new ministry. It included the negotiation of commercial treaties with Germany, Austria-Hungary and Switzerland; the refunding of the public debt to the financial advantage of the government; the renewal of agreements with the railroad companies or, if necessary, the operation of the roads by the state; and a series of measures for the improvement of the economic and industrial conditions of South Italy (see RECORD of June, 1903, p. 378). The measures proposed for the benefit of South Italy include the construction of roads, canals, aqueducts and sanitary works, the reduction of communal debts, the lowering of taxes and other fiscal reforms. Bills were introduced providing for the abolition of compulsory domicile and for making Sunday an obligatory day of rest. The latter measure was rejected by the chamber as not being practicable in the form in which it was cast. Three days after the announcement of the ministerial program the government secured a vote of confidence (284 ayes, 114 nays), the opposition consisting of the socialists and of the two groups of which Signors Sacchi and Sonnino are the leaders. With this endorsement the ministry entered actively upon the execution of its program. In February the first of the series of measures for the benefit of South Italy was passed.

It provides for an extensive system of money advances to the cultivators of grain in the Basilicate, for fiscal reforms, and for the execution of public works. **The financial condition** of Italy has been favorable during the period under review. The budgetary statement of Signor Luzzatti, financial minister, showed a considerable surplus for the year 1902-03 and an estimated surplus for the present year exceeding six million lire. The scheme for refunding the public debt provides for the conversion of the four and one-half per cent and five per cent stock on a basis which will insure an annual saving of 46,000,000 lire. The conversion of the four and one-half per cents is now proceeding with success. In the matter of commercial treaties the government has been less successful. The negotiations with Austria-Hungary failed chiefly on account of disagreement concerning the tariff on Italian wines and fruits imported into Austria-Hungary. On December 31 a provisional treaty was concluded which is to remain in force until October, 1904. The basis of a treaty with Germany has been agreed upon, and negotiations with Switzerland have begun under favorable auspices. — There has been rather more than the usual airing of **political scandals**. Much interest was excited by a libel suit prosecuted by Signor Bettolo, minister of marine in the Zanardelli cabinet, against Signor Ferri, a Socialist deputy who had charged the minister with grave official misconduct. The trial lasted fifty-one days and resulted in the conviction of Signor Ferri, who was sentenced to imprisonment for a period of fourteen months and to pay a fine of 1516 lire. Similar charges having been made against the present minister of marine, Admiral Mirabello, the government proposed and the parliament adopted a bill constituting a commission to investigate the condition of the navy. Severe attacks were made by the socialists upon other members of the cabinet, one of whom, Signor Rosano, was driven to suicide. The government's policy in Italian Somaliland was severely criticized, chiefly on account of the use which the British were allowed to make of certain places therein in the course of the campaign against the Mullah. — Miscellaneous measures and events were: the enactment of a law providing for the admission of women to the bar; the issue of a royal decree creating twenty-eight new senators; the rejection at this session also of the divorce bill which has been before parliament for several sessions; the death on December 26 of ex-Premier Zanardelli, who resigned from the cabinet on October 21 (see last RECORD, p. 745). Renewed "Irredentist" disturbances have been noted above (see INTERNATIONAL RELATIONS).

SPAIN. — The Villaverde cabinet resigned on December 3, after a tenure of less than six months (see last RECORD, p. 745). A **new cabinet** of an ultra-Conservative type was formed by Señor Maura, who is pledged to secure the passage of the naval reconstruction bill and a rigid enforcement of the policy of repressing republicanism. Among the measures proposed by the new government was a bill for the reform of

the electoral system, including the establishment of compulsory voting. In February the government bill appropriating 1,000,000 pesetas for military purposes passed the chamber by a vote of 139 to 114. The position of the Maura ministry has been rendered precarious and the anti-clerical movement has been stimulated by the appointment of a former archbishop of Manila to the bishopric of Valencia. The appointment gave occasion for interpellation in the Cortes, and many public meetings were held throughout Spain to protest against the action of the government. A fruitful theme of discussion in the Cortes has been Spanish interests in Morocco, particularly since the conclusion of the Anglo-French colonial treaty (see INTERNATIONAL RELATIONS). — The municipal elections of November 8 resulted in unexpected victories for the Republicans. In January the agitation throughout the country against the octroi duties on food stuffs culminated in serious riots in several provinces. An unsuccessful attempt upon the life of Premier Maura was made by an anarchist at Barcelona on April 12.

MINOR EUROPEAN STATES. — In **Belgium** the communal elections were held in October. The Liberal party carried all the larger cities and most of the larger towns. In parliament a considerable portion of the session was taken up with the discussion of a labor accident bill, which finally passed. Other bills which became laws regulate the sale of oleomargarine, establish labor pensions, reduce the tax on sugar, and give greater permanence of tenure to communal employees. The industrial and financial condition of Belgium has been exceedingly prosperous. The royal lawsuit over the will of the late queen of the Belgians was the most generally discussed topic at the close of the period under review. — In **Holland** increased expenditures for the army were authorized and a new customs tariff was adopted containing protectionist features. — The politics of **Denmark** have been enlivened by energetic attacks of the socialists on the government and by an agitation in behalf of female suffrage. An important law was enacted for the reform of the financial and judicial service. A much-discussed measure which failed of adoption was a project for re-establishing corporal punishment in certain cases. — In **Norway** the Storthing unanimously rejected the much-agitated project conferring upon women the parliamentary suffrage. — In **Switzerland** on December 17, M. Comtesse (Radical) was elected president of the confederation for the year 1904. Three important measures were rejected by popular vote. The first was a proposed amendment to the constitution providing for the apportionment of members of the National Council according to Swiss population and not according to total population, the purpose being to effect a reduction of the representation of the cities. This amendment was defeated by a majority of 199,000 votes. The second measure was a proposition to increase the excise on rum: it was rejected by a majority of 60,000. The third was a proposal to add a new offense to the criminal code, making it un-

lawful for persons not serving in the army to incite persons in military service to disobedience or mutiny. This measure was severely denounced by the socialists as an encroachment upon the liberty of speech and of the press and was rejected by a majority of 143,000 votes. Great progress is being made on the new federal codes. A draft of the civil code has been laid before the chambers for consideration and a draft of the criminal code is expected to be ready at an early date. Measures which have become law are a naturalization act and an act providing grants from the federal treasury in aid of primary schools. Negotiations for revision of the commercial treaties with Germany and Italy are in progress. In December a treaty was concluded with Italy by which that country transfers to the confederation the Simplon railway concession through Italian territory. — In **Portugal** the Cortes opened on January 2. The royal speech announced the introduction of measures for a renewal of contracts with the bank of Portugal in order to diminish paper currency, for the imposition of import duties payable partly in gold, and for the establishment of a system of wireless telegraphy with the Azores. — In **Greece** the ministry resigned on December 16 in consequence of inability to carry through its policy. Ex-Premier Theotokis was entrusted with the task of forming a new cabinet. He announced as the leading feature of his program the reorganization of the army. After a prolonged debate the chamber gave its approval to the measure, accepting the requisite financial burdens. — (For Balkan politics, see **INTERNATIONAL RELATIONS**.)

V. AFRICA AND ASIA.

AFRICA. — A general election was held in **Cape Colony** in February for members of the colonial parliament. The race question was the main issue, the Progressives advocating more harmonious relations between the Dutch and English races in the colony, the Afrikaner Bond (Boer party) demanding Dutch supremacy. The Progressive party secured a majority of five seats over the Bond, thus insuring British supremacy in the colony. This outcome is also regarded as a victory for South African federation. Sir Gordon Sprigg, who had represented East London for nearly thirty years, failed to secure a reelection. Immediately after the election he resigned the premiership which he had held for about twelve years, and Dr. Jameson was summoned to form a cabinet, which he accomplished in the latter part of February. At the opening of the colonial parliament on March 4, measures were announced for the increase and redistribution of seats: three members to be added to the Legislative Council and twelve to the House of Assembly, the new seats in the latter body to be distributed mainly among the larger towns. — In the **Transvaal** the scarcity of labor has continued to overshadow all other questions. In the latter part of November the Labor Commission re-

ported that the demand for native labor for agriculture, mining and most of the other industries was greatly in excess of the supply (the shortage was estimated at 241,000 laborers), and recommended the importation of Chinese coolies. For many months the expediency of introducing Asiatics has been thoroughly discussed throughout the colony, the proposition being generally favored by the British residents and opposed by the Dutch. Finally, on December 30 a motion in favor of the introduction of Asiatic labor passed the Legislative Council by a vote of 22 to 4 and in the latter part of January a labor importation ordinance was enacted. It authorizes the importation of Chinese laborers under certain rigid conditions, among others that importers shall procure licenses from the government and furnish security that upon the expiration of the period of contract, which cannot exceed five years, the laborer shall be returned at the expense of the importer to the county of his origin; that no person so imported shall be employed except in unskilled labor in the mines, and that no laborer thus employed shall be allowed to leave the mines without a permit from an authorized person and even then for not longer than forty-eight hours. Industrially and financially the condition of the Transvaal has been unfavorable. There has been an increasing business depression, due chiefly to the scarcity of labor, and a resultant treasury deficit amounting to \$5,000,000. — In the **Orange River Colony** a measure providing for the addition of four official and four unofficial members to the Legislative Council has received the sanction of the king. — **German Southwest Africa** has been disturbed by an uprising of the natives (Hereros). Besides destroying houses and farm implements and driving off cattle, they killed many of the German residents, one hundred and thirteen having been put to death with savage cruelty in one district alone. On March 13 the German troops suffered a severe defeat at the hands of the Hereros (see **GERMANY**). — The British **Somaliland Expedition** against the Mad Mullah (see **RECORD** of June, 1903, p. 383) has been successful. In January it was reported that the British forces had routed the Mullah and killed 1,000 of his followers. On February 26 General Manning succeeded in killing 150 of the Mullah's men and capturing 3,000 camels. — The revolt against the sultan of **Morocco**, headed by the pretender Omar Zarahuni, (see **RECORD** of June, 1903, p. 383) has not been suppressed and the governmental finances are reported to be in a state of collapse.

ASIA. — The politics of **Japan** have been dominated, during the period under review, first by the negotiations and then by the war with Russia (see **INTERNATIONAL RELATIONS**). The Imperial Diet met on December 10. The emperor's speech referred in the briefest manner to the progress of the negotiations with Russia, declaring only that the ministers had been instructed to attend carefully to their duties. The lower chamber promptly adopted a reply, denouncing the policy of the cabinet as a failure and expressing "profound regret" that the measures of the

government were so ill adapted to the needs of the situation. The emperor requested the chamber to rescind its action, and upon its refusal he dissolved the Diet. The elections, held on March 1, resulted in a notable decrease in the strength of the Sei yu Kai (Ito's party) and a corresponding increase in the number of the Independents. The new Diet met March 20 to adopt measures necessary to carry on the war. The state tobacco monopoly was extended; increased taxes were imposed on land, on wine and other articles; certain new taxes were introduced; and a loan of \$50,000,000 was authorized. The government assumed control of all private railroads and impressed into its service the ocean line steamships. Two cruisers were purchased from the government of Argentina for \$7,500,000. (For other Asiatic events, see INTERNATIONAL RELATIONS, BRITISH COLONIES AND INDIA, and FRANCE.)

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THE ELECTORAL SYSTEM.¹

THE system of choosing the president and vice-president by electors is established in the Constitution of the United States. To amend that Constitution is not easy, even where there is no objection to the proposed change. Jackson, fifty years ago, proposed to extend the term of the president from four to six years and to make him ineligible. That was right, and was generally favored as a great reform; but it is not yet adopted. Some, however, propose to abolish the electoral college altogether, to choose the president and vice-president by a direct vote, and to let a plurality of the popular vote of all the states make that choice. As such a change would decrease the power of the small states and enlarge that of the great ones, and thereby affect the dignity and equality of the states as such, so far as now recognized in that choice, it would certainly meet with serious, and probably with successful opposition. While it is only in the Senate that the ab-

¹ This paper was prepared by the late James Rood Doolittle, sometime Senator from Wisconsin, shortly after the general election in November, 1884. At that general election, it will be remembered, Grover Cleveland was elected president of the United States over James G. Blaine. Judge Doolittle was greatly interested in that campaign, and contributed to the result with his voice and vote for Mr. Cleveland. The able and distinguished character of Judge Doolittle, his great familiarity with all matters pertaining to the public service and to official life, his long and intimate connection with public affairs, local and national, both in an official way and as a member of the legal profession, his luminous presentation of the questions considered in this paper, make the publication of it a contribution of more than passing interest or of ordinary value, whether viewed in the light of history or of politics. Although the article was prepared by request, it has never been published. It came into the possession of the undersigned, who has been engaged in the preparation of a sketch of the distinguished publicist.

MILWAUKEE, WISCONSIN, DECEMBER, 1903.

DUANE MOWRY.

solute equality of the states is guaranteed forever, it is not likely that the smaller states would ratify an amendment to deprive them of their relative power in choosing the chief executive. Each state now casts two votes in the electoral college, as a state, which would not be the rule in case of a direct vote by the people. Besides, a majority of all the electors is now necessary to a choice. If no one has that, then the choice is to be made by the House of Representatives, where each state has one vote and a majority of all is necessary, and where Rhode Island would be equal to New York. It is therefore safe to conclude that such a change is not practicable, as it would fail to be ratified by three-fourths of the states. It might also be feared and opposed as a step towards centralism. As long as parties in the great states are evenly balanced, the smaller ones might retain their relative weight; but in a crisis two or three great states might unite their vote and overwhelm the other states in the choice of a president.

Against the wisdom of a direct popular vote it might also be objected that a president might be chosen by one party and a vice-president by another, in which case the death of the president would change the control of the government from one party to another. Within the last twenty years¹ two presidents have been assassinated, and mainly for political reasons. Both assassins, it is true, were near if not across the border line between sanity and insanity; yet the motives for those bloody deeds were more or less political. They were not done from personal malice, but to remove the president. Neither act ousted the party in power; but both show how dangerous it might be to have a single life stand between the continued power of a great party and the installation of its opponent.

The idea which underlies a presidential election is peaceful revolution. At stated intervals, the people not only change the names of their rulers, but change the administration and policy of their government, by peaceful revolution, which is authorized and regulated in the Constitution itself. That is both the essence and the crowning glory of our system. What other nations, under other forms of government, cannot do except by bloody civil war and expending millions of treasure, we do without shedding

¹ Ex-Senator Doolittle was writing in 1884. — D. M.

one drop of blood, by peaceful assemblies, free discussion, and the ballot. But when such a change is once determined upon by the sovereign people, it is certainly wiser that the vice-president should be chosen to carry out the same policy as the president whose place he is to fill in case of a vacancy.

But an important and very desirable change in our electoral system which would remove many of its evils can be made without abolishing the electoral college or disturbing the relative power of the several states in that body.

That change should provide that two electors at large, for president and vice-president, be chosen by a plurality of the voters of each state on a general ticket, and that one elector be chosen by a plurality of the voters in each congressional district. This would preserve to each state the same relative weight in the choice which it now has. It could be effected before another presidential election, if all the states would join in it by common consent. But it is doubtful, to say the least, whether all of them acting independently would join in adopting it. Jealousies, arising from doubts whether they would always stand by it in case a partisan advantage could be gained by overthrowing it, might prevent it. Probably the only way in which it could be adopted would be by a change in the Constitution. That, as we have said, is not easy to be made, and it could be made only if favored by both of the great existing parties.

But should that change be made, two electors in each state would be chosen by the party which casts a plurality of the votes of the entire state, and one elector in each congressional district by the political party which casts a plurality of the votes in that district. The electors chosen in each state would thus very nearly represent the relative strength of its political parties. A state would not vote as a unit for president and vice-president unless all of its electors were of the same party faith; and minorities would not be so completely stripped as at present of all part in the election of the president.

The proposed measure is neither so radical nor so popular as the direct vote; but while it retains the conservative feature of the electoral college and leaves undisturbed state representation in that body, it is a long stride toward the exercise of local power

by the people, and in practice it would undoubtedly secure the same result as a direct vote by the people.

Among the great benefits of such a change, first of all, it would put an end to the solid North and to the solid South. All parties would be national. Sectionalism would cease to be of advantage to any party. Republicans would choose electors in Democratic states, and Democrats would do the same in Republican states, and both would be guided by the spirit of nationalism. While each state would have the same number of votes, the people in each state would be more truly represented in the electoral college. As the matter now stands, each state in the electoral college practically votes as a unit. A very small plurality in a large state has therefore a most potent voice in determining the result. As the unit vote of a state in the electoral college is the only ground upon which the unit rule in a nominating convention can be defended, it would follow that if the state ceased to vote as a unit in the college which chooses, the unit rule in the convention which nominates the president and vice-president would cease also; and that would give to the people of each congressional district a voice in those important bodies where the candidates, by virtue of an unwritten law almost as binding as the Constitution itself, are placed in nomination for these high offices.

Again, the change here suggested would prevent making any one or two states the great battle ground of a presidential election. The real contest would be all along the line. Each congressional district wherever located, whether in Maine or Louisiana, would be equally important as a battle-field.

By such a change, also, we might hope to see an end to those corrupt schemes and combinations to carry or defeat a plurality in a single state. The tendency of political affairs of late years, with the increase of wealth and the enlargement of the powers of the central government, has been in the direction of the expenditure of large sums of money in presidential elections. No patriot can view without sincere alarm the use of vast corruption funds in those elections. If one party resorts to it, the other is driven, willing or unwilling, to similar methods. The laudable ambition of the worthy is thereby smothered; the cunning and avarice of the vicious are aroused. The better elements of society are re-

pressed, and the worst are stimulated to prodigious activity, by an atmosphere tainted with greed and dishonor. In late presidential elections, hundreds of thousands, if not millions, have been expended in doubtful states, in order to obtain a plurality of their popular vote and thus secure their unanimous electoral vote. It is probable that so long as the inducement remains the practice will continue and its demoralizing effects increase with time and exercise. If the battle in a great state could be reduced to a contest over the two electors at large, it is manifest that the inducement for the expenditure of large sums of money in carrying the state would be gone. The election of president would be rendered more peaceful, and less liable to provoke bitterness, and possible strife, as over a fraud as charged in Louisiana in 1876, or over a close result as in the recent election in the state of New York, where a change of six hundred votes would have reversed the result of the presidential election.

Both political parties can well afford to adopt the proposed amendment. While it might seem a concession on the part of the Democratic party, which has just regained power, to divide with its opponent the electoral votes of Northern states which it now has and of others which it may perhaps be able to secure, still the leaders of that party may well rely on the people and on its recognized ability to carry a majority of the congressional districts and a majority of the electors to be chosen therein. The Republican party can also favor the proposition, for it would assure to that party electoral votes, not only in the South, but in several of the close states of the North which it is in danger of losing altogether in case its victorious opponent shall succeed in securing a small plurality in them. But beyond and above any consideration of temporary, or future advantage, both parties ought to favor the measure as a means of purifying our political life, and of placing the choice of president and vice-president nearer the people and more fully within their control.

Had this system been in force in 1876, Tilden and Hendricks would have been declared elected and would have been inaugurated without a question; and at the recent election the result would have been the same as it now is. Each state would have chosen two electors at large, corresponding to the number of sen-

ators. In all there would have been 76, of whom 40, chosen by the twenty democratic states, would have cast their votes for Cleveland; and 36, chosen by the eighteen republican states, would have cast their votes for Blaine. The several congressional districts in all the states, if judged by the result in electing members of the House, would have cast 183 votes for Cleveland, and 141 for Blaine. Cleveland would have been chosen by a majority of 46 votes, instead of a majority of 37 under the existing electoral system.

But analyze the vote, and some striking results appear. For instance, New York, instead of 36 under the present system, would have given only 19 votes for Cleveland and 17 for Blaine; while Ohio, instead of 23 votes for Blaine, would have given 11 for Cleveland, and only 12 for Blaine. Similar results would appear in most of the states. A few at the North, like Maine, Vermont, New Hampshire, Kansas and Nebraska, would have given all their votes for Blaine; and a few at the South, such as Alabama, Texas, Mississippi and Georgia, would have done the same for Cleveland. But the minorities in most of the states would have had a potential voice in the electoral college. The sectional idea of a solid North on one side and a solid South on the other would have disappeared; and at the same time the presidential election would have been brought nearer to the people.

Such a change in our electoral system would be popular and consistent with the spirit of the age; and while tending to purify our political life, would promote peaceful elections, and thereby insure the permanency of our institutions.

JAMES ROOD DOOLITTLE.

NOTE. In the above article the author points out what the results would have been in 1876 and 1884 had the system he advocates been in use. A study of the presidential elections since the last mentioned date shows that the results would have been practically the same under either system. The following table has been compiled from the *World Almanac*; on account of contests, *etc.* the figures are only approximately accurate, but sufficiently so for our purpose.

	STATES CARRIED	REPRESENTA- TIVES ELECTED	ACTUAL ELECTORAL VOTE	ELECTORAL VOTE UNDER PROPOSED SYSTEM
1888				
Republicans	20	166	233	206
Democrats	18	159	168	195
1892 ¹				
Republicans	16	126	145	158
Democrats	23	220	277	266
Populists	5	8	22	18
1896 ²				
Republicans	23	206	271	252
Democrats	22	134 ³	176	178
Populists, <i>etc.</i>		16		16
1900				
Republicans	28	198	292	254
Democrats	17	151	155	185
Populists, <i>etc.</i>		8		8

The above figures show that the proposed system would tend to lessen the majority of the victorious party, and would also give one or more electoral votes to any party strong enough to carry one or more districts, even though the party should not succeed in carrying a single state. In consequence there would be greater likelihood, in cases where there should be more than two parties, that the choice would devolve upon the House of Representatives.

It is worthy of remark that in the election of 1892 the proposed system received a trial in the state of Michigan. In that state, which is normally Republican, a Democratic legislature and governor carried through a law which provided that one elector should be chosen in each of the twelve congressional districts, and two electors for the state at large. The result was that, although the state as a whole went Republican, the Democrats won the day in five districts, and consequently gained five of the fourteen electoral votes. It is needless to say that the Republicans repealed the law when the new legislature met.

PAUL LELORD HAWORTH.

¹ The two Representatives for Rhode Island were in reality not chosen until the spring of 1893.

² One vacancy in Missouri.

³ Including 15 classed as Fusionists.

MONOPOLY AND TARIFF REDUCTION.

THERE was a time when theorists and practical men seemed to be in hopeless disagreement concerning the entire subject of protection. In the view of the practical man an economist was a person who in his study had reached certain conclusions which were equally unanswerable in themselves and irreconcilable with the facts. The expression most commonly heard in this connection was that "theory and practice do not agree." The doctrinarians were, in those days, unusually harmonious among themselves, for there were comparatively few who made a vigorous defense of protection on grounds of economic principle. The practical world was less harmonious, since the views of different parts of it were colored by differing interests; but the fact that science did not fall into self-contradiction was encouraging. It was possible for the uncompromising free trader to think and to say that fundamental principles were all on his side and that the protectionist had nothing in his favor except transient disturbances that interfered with the perfect working of the principles.

Now the business world conceded too much to the free trader when it said that he had theory altogether in his favor. What he could truthfully claim and what the world could safely admit was that he had *static* theory in his favor. Static theory deals with a world which is free not only from friction and disturbance but also from those elements of change and progress which are the marked features of actual life. Stop all the changes that are taking place in the industrial life of the world; put an end to inventions and improvements in business organization; let there be no moving of population to and fro and no increase of the aggregate population of the world; further, let there be no addition to the wealth of the world and no change in its forms, and you will have the static state. Men would go on making things to the end of time, using identically the same methods that are now in vogue and getting identically the same results. In such an imaginary world there would be no possibility of answering the contention of the general body of economists of a generation ago. Free trade would be the only

rational policy and it could be defended upon the simple ground on which division of labor in the case of individuals is defended. One man has an aptitude for making shoes, another for making watches, another for painting pictures, and so on, and each one of them can gain far more by devoting himself to his specialty and bartering off the product of it than he can by trying to make everything for himself. Nations have their special aptitudes and should follow them and make all they can out of them; and the nation which has special facilities for producing cotton or wheat or petroleum or gold and silver bullion should devote itself to its specialties, barter off the results and get all manner of goods in return.

It is true indeed that a great nation like our own makes a much better jack-of-all-trades than an individual can make. It is far more probable that the nation as a whole can produce without much waste all the things it wants to use than that any individual can do so. If we have all climates from the tropical to the arctic all soils and a full list of mineral deposits, why should it pay us to confine ourselves to the making of only a few things in order to barter them off for others? Why should we not with our wide range of resources make everything?

Undoubtedly we can make almost everything if we insist upon doing it; but there are still some things that other countries can make and sell to us on such terms that we can do better by buying them than by producing them ourselves. We can raise tea in the United States, but it pays us better to make something else and barter it off for tea. A day's labor spent in raising cotton to send away in exchange gives us more tea than a day's labor spent in producing the latter article directly. In a static condition we should have found in what fields it is most profitable to employ our energies. We should be directly making things that it would pay us best to make, and we should be indirectly making the other things; that is, we should be producing articles to send off in exchange for those other things. Wherever an indirect way of acquiring a thing had proved most profitable we should have adopted that method, and we should always adhere to it. Anything that forced us to make directly something which we could secure in greater abundance by bestowing the labor that would make it on

making something else, would turn our energies in a comparatively unproductive direction. It would inflict on us a waste and a loss — and there are such wastes and losses inherent in the operation of the principle of protection, and there is no contending against the argument that demonstrates their existence. Protection and a certain distortion of the productive system, a certain misdirection of energy, are synonymous.

Now an intelligent argument in favor of protection begins at this point. It accepts the whole static argument in favor of free trade and its own assertion begins with a "nevertheless." It claims that in spite of what is thus conceded, protection is justifiable since in the end it will pay, notwithstanding the wastes that attend it. The argument for protection is entirely a dynamic one. It is based on the fact of progress and admits that it could make no case for itself under the conditions of a static state. If every country had certain special facilities for producing particular things, and if its state in this respect were destined to remain forever unchanged, it could, to the end of time, make itself richer by depending for many things on its neighbors than it could by depending for those things immediately on itself. The fact is, however, that a nation like our own abounds in undeveloped and even unknown resources which, when brought to the light, may take precedence of many of those which are known and utilized. If our country from end to end were like Cape Nome and as rich in gold as the richest part of that remote region, and if it were certain that the deposits of gold would never be exhausted and would employ the whole energy of our people, it is clear that we should have one staple occupation and should depend upon the rest of the world for almost every sort of portable commodity. We should be estopped from manufacturing by the great productivity of labor in placer mining. So long as men can make ten dollars a day by washing out gold from the sands there would be no use in setting them at work making two dollars a day as weavers or shoemakers or what not. By buying our cloth with gold dust we could get far more of it than we could if we took the men out of the mine and set them to making the stuff itself. But — and here is the proviso that makes the supposition correspond with the fact — if besides the placers we had deep mines of other metals than gold,

if we had oil and lumber and loam of every variety, and if we had people with undeveloped mechanical aptitudes, it might be that we should do well to develop these latent energies even in a wasteful way. The condition that would fully establish the similarity between the supposed case and the actual one is that the placer deposits should be, as placers are, sure to be exhausted by continued working and that producing other things than gold should tend to become, with time, a more and more fruitful process. We can justify the attitude of the country that taxes itself at an early date for the sake of testing and developing the latent aptitudes of its land and its people. At the outset it will thereby sustain a loss, because at the outset it can gain more goods by the indirect method of exchange than it can by production; but there may easily come a time when it can gain more by the direct method. If we learn to make things more economically than we could originally make them, if we hit upon cheap sources of motive power and of raw material, and especially if we devise machinery that works rapidly and accurately and greatly multiplies the product of a man's working day, we shall reach a condition in which, instead of a loss incidental to the early years of manufacturing, we shall have an increasing gain that will continue to the end of time. It may be, further, that without protection and the burdensome tax which it did undoubtedly impose upon us, we should have had to wait far too long for this gain to accrue and should have sacrificed the benefits that come from a long interval of diversified and fruitful industry.

In short, the static argument for free trade is unanswerable and the dynamic argument for protection, when intelligently stated, is equally so. The two arguments do not meet and refute each other but are mutually consistent. It is possible to ridicule the argument for protection under the name of the "infant-industry" argument, and it is possible for the policy it upholds to continue long after this argument has ceased to be valid. The overgrown infant will have sacrificed his claim for coddling, but that will not prove that there was never a time when he needed it.

Now there is an argument for tariff reduction which accepts both the static argument for free trade and the dynamic argument for protection. In fact it bases itself on the protectionist's modern

and intelligent claim. To advance in any form the infant-industry argument is to admit that the policy advocated is temporary. Protective duties are, in fact, self-testing. They reveal in their very working whether they were originally justifiable or not. The ground on which they were imposed is that they would develop latent resources — that they would enable labor to produce as much by making a class of articles formerly produced in foreign countries as it could produce by engaging in industries already established, and exchanging its products for the former articles. If that time should come, the industry that had to grow up originally under the protection of a duty would become so fruitful that it could dispense with the duty. Taxes of this kind tend to become inoperative, provided always that the latent resources for economical production really exist.

Some years ago a man who had retired from the business of making spool silk remarked that, in his judgment, a duty of three per cent on imported silk of this kind would enable the American mills to hold full possession of their own market. The difference between what it cost the foreigner to make the silk and what it cost the American to make it was, as he thought, not over three per cent. If he was right in his estimate, almost all of the actual duty might have been abolished without crushing the American manufacturer. Americans had developed a sufficient aptitude for making spool silk to be able to get nearly as much of it by turning their labor in that direction as they could by turning their labor in any other direction and exchanging the product for foreign silk. We must originally have lost much by forcing ourselves directly to make the silk, for at the outset we could not make it as economically as we could make an article which we could exchange for it. At the time of which we are speaking we could make it with almost no waste, and the case illustrates a general fact with regard to duties upon articles in the making of which we are originally at a disadvantage but are afterwards at no disadvantage at all. When our original disadvantage has been quite overcome, the duty becomes inoperative. Whether we keep it or throw it off will make no difference to the American manufacturer or to the American consumer — provided always that competition is free and active. If it is not so, there is a very different story to tell.

Instead of getting from the soil gold dust to barter for merchandise we have been getting a product that is not so greatly unlike it. For grains of gold read kernels of wheat and the statement will tell what a large portion of our country has produced and exported. The productivity of wheat-raising has made it uneconomical, in certain extensive regions, to engage in other occupations; but as the fertility of the wheat lands has declined, and as the productive power of labor in other directions has increased, we have reached a point at which it is just as natural to make things for which we formerly bartered wheat as it is to produce the grain itself. The decline in the fertility of agricultural lands and the increase in the productive power of labor devoted to making steel have made the manufacturer of the latter article as independent as is the raiser of cereals. Originally it was necessary to protect iron and steel industries from competition in order to secure the establishment of them at an early day. Now it is apparently not necessary to continue the protection. Labor in making steel will give us as many tons of it in a year as the same labor would give us if spent in the raising of wheat to be exchanged for foreign steel. The duty on steel, if this is the case, has become inoperative, in the sense that it no longer acts to save from destruction the steel-making industry. It is perniciously operative in another direction, for it is an essential protector of a quasi-monopoly in the industry; and this illustrates what often happens in cases in which the infant-industry argument proves to be well grounded. The argument predicts for the newly established industry a great future development and a time of ultimate independence. Protection undertakes to nurse it through its period of helplessness and dependence into a time when it can stand on its own feet and maintain itself against rivals. If that period comes — and the history of the United States shows that in many cases it has come — you can throw off the entire duty, if you will, and unless the price of the article has been artificially sustained by something besides the duty, our manufacturers will not lose possession of their market.

An essential condition of realizing the happy predictions of the protectionists is that competition among American producers should be unimpeded. If that were so, goods would, as they said,

be sold, in the end, at prices fixed by the costs of production, including the normal rate of interest on the capital employed. Manufacturers may originally get large profits, as an offset for such risks as they take in doing pioneer work; but afterwards they will get interest on their capital and a good personal return for directing their business, but nothing more. If they sell goods at prices which yield only such returns as this, they will, when the industry is on its feet, sell them as cheaply as the foreigner would do. The high duty, if it still continues, may make it doubly difficult for the foreigner to come into our market; but with goods selling at natural or cost prices he would not come into it in any case and the duty might be abolished with entire impunity.

There are indeed some questions which arise as to occasional unloading of extensive stocks in foreign markets, and protection has been called for to prevent the foreigner from making America his "dumping ground." This process works in both ways: the American can dump his surplus products into foreign territory as well as the foreigner can into American territory. Not much attention need be paid to this particular phase of the subject. Conservatism will probably suffice, for a long time, to retain in force a somewhat higher duty than is called for on general grounds. In the main the fact is as stated: if the protected infant has the capacity for growth that was attributed to him when the course of nursing, coddling, training and patient waiting was entered upon, he will announce that fact after a term of years by showing his inherent strength and proving that these fostering practices are no longer necessary. They are then needed only to aid a monopolistic power within the industry.

It appears, then, that duties have two distinct functions. One is to protect from foreign competition an industry as such — to shield every producer, whether he is working independently or in a pool or trust. The other function is to protect a trust in the industry — to enable a great combination working within the limits of the United States to keep that great field to itself and still charge abnormally high prices for its products. In fact a distinguishable part of a duty usually performs the former of these functions and another distinguishable part performs the latter. If the natural price of an article is based on the cost of making it in

the United States, and if that is twenty per cent higher than the cost in a foreign country, a duty of twenty per cent will place the American product and the foreign product on an equality. The American maker will not be driven from his market until he begins to charge an abnormally high price. If he does that, the foreigner will come in. Suppose, then, that the duty is forty per cent. Twenty per cent may be needed to enable the American manufacturer to hold his own as against the foreigner. Provided he exacts from consumers of his goods only the natural returns which business yields, year in and year out, he can sell all that his mills produce with no danger that the foreigner will supplant him. The other twenty per cent of duty enables him to add a monopolistic profit to his prices. He can raise them by about that amount above what is natural before the foreigner will begin to make him trouble.

The trust has its own peculiar ways of stifling competition within the limits of our own country, and these ways are sufficiently familiar. There are the favors which it is able to get from the railroads and there is the practice of selling its goods in some one locality at a cut-throat rate whenever a competitor appears in that locality. There is the so-called factor's agreement, which often forces merchants to buy goods of a certain class exclusively from the trust. By these means and others the trust makes it perilous to build a mill for the purpose of competing with it. If, indeed, it makes its prices very high, some bold adventurer will build such a mill and take the chances that this entails; but if the trust stops short of offering such a tempting lure in the way of high prices, it can keep the field to itself. If the extra duty of twenty per cent did not exist, nothing of this sort would be possible. The trust would have to sell at a normal price in order to keep out the foreigner, and so would its independent competitor. Both the combination and its rivals could make their goods and sell them in security. The industry as such is protected by the duty of twenty per cent, and it is the additional duty which is the protector of monopoly — the enabling cause of the grab which the trust can make from the pockets of the consuming public.

In practice one would not try to make the figures quite as exact as is implied in the statement that just twenty per cent of

duty is needed to protect the industry as such from the foreigner, and that just another twenty per cent acts as a maker of a monopolistic price. It would be impracticable to fix the duty in such a way as exactly to meet the need of protection. Owing to fluctuations in values the duty might be made slightly higher than is necessary under normal conditions. All these things would have to be considered by a competent tariff commission. The figures we here use are illustrative only; but the principle is as clear as anything in economics. Protecting an industry as such is one thing; it means that Americans shall be enabled to hold possession of their market, provided they charge prices for their goods which yield a fair profit only. Protecting a monopoly in the industry is another thing; it means that foreign competition is to be cut off even when the American producer charges unnatural prices. It means that the trust shall be enabled to sell a portion of its goods abroad at one price and the remainder at home at a much higher price. It means that the trust is to be shielded from all competition except that which may come from audacious rivals at home who are willing to brave the perils of entering the American field provided that the prices which here rule afford profit enough to justify the risk.

This line of cleavage runs through the greater part of the duties which this country now imposes on foreign articles; and the fact reveals the scientific rule for tariff reduction. Up to a certain point, according to the traditional American view, the duty may do good. It may be protecting an industry that is not quite an infant and yet has not grown to its full stature nor attained to its full competing power. Whatever may be claimed as to what ought to be done with this portion of the duty, there is no doubt what will be done: it will be retained, and the American people will wait with such patience as they may for the coming of the time when the industry will be independent of all such aid. Beyond this point a protective duty becomes a trust builder *par excellence*.

There are some industries which are fully matured. The duties which were imposed to shield them during their infancy are no longer necessary for that purpose. The amount of protection that in these cases is necessary to keep the American market for American product is *nil*. The sole effect of duties on the

products of such industries is to encourage monopoly. At the other extreme there are a few industries which have not gravitated into the control of monopolies and which need much of the protection that they have in order to hold their present fields. If they really are infants and not dwarfs — if they have the capacity to grow to full stature and independence — the policy of the people will undoubtedly be to let them keep, for a considerable time, all the protection that they now enjoy. The number of such industries as this is comparatively small. In the case of the great majority of our duties there is one part that protects the industry as such and another part that protects the monopoly within it. Throw off the whole duty and you expose the independent rivals of the trust, as well as the trust itself, to a foreign competition which they are hardly able to bear; but if you throw off a part of the duty — the part which serves to create the monopoly — you do not destroy and probably do not hurt the independent producer. His position now is abnormal and perilous. He may be continuing solely by grace of a power that could crush him any day if it would, and its power to crush him is due to the great gains which its position as a monopoly affords. When it wishes to crush a local rival it can enter his territory and, within that area, sell goods for less than it costs to make them; and while pursuing this cut-throat policy it can still make money, because it is getting high prices in the other parts of its extensive territory. With no such great general returns to draw on as a war fund, the trust would have to compete with its rivals on terms which would be at least more nearly even than they now are. It would still have weapons which it could employ against competitors and its capacity for fighting unfairly would not be exhausted. Without further action on the part of law makers the position of a small rival of a trust might be unnaturally dangerous; but an essential point is that one means which the trust adopts in order to crush him depends on the existence of great profits in most of its territory; and these would not exist if it were not for the unnecessary and abnormal part of the duty.

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powerful, as we do not need to be told, and it will find ways of thwarting tariff reduction as it does other anti-trust legislation. Drastic laws forced through legislatures or Congress during ebullitions of popular wrath — laws which demand so much in the way of trust breaking that they will never be enforced and never ought to be — have not, thus far, been prevented. Such “bulls against the comet” have been issued frequently enough, but serious legislation based on sound principles will encounter graver difficulties. There are difficulties before our people even where they see clearly what they want and are trying to get it; but where they do not see what they want the case is hopeless. The trust-making part of protective duties has an effect about which there is no uncertainty, and if the American people discover this fact, they will not have reached their goal, but the laborious route that leads to it will at least lie distinctly before them.

The general facts which have here been cited call for the abolition of a certain part of the existing duties and the retention of another part, and they make the division between the two parts clear at least in principle. We want to keep one part of a duty whenever it protects an industry which is not yet mature but is on its way towards maturity. We want the industry because it is progressive in its wealth-creating power and will one day make an important addition to our national income. It is a dynamic agent — a factor in the progress we are making toward the unrealized goal of universal comfort. We do not want the other part of the duty, first, because we do not want monopoly. Any feature of our industrial system which is convicted of being simply a monopoly-building element is condemned by that fact to extinction, if the power of the people suffices to destroy it. Does this mean that the consolidations themselves are thus condemned? Do we not want great corporations with vast capitals? Assuredly we want them, for the sake of their economy and of their capacity for greater economy. With the element of monopoly taken out of them they will become dynamic agents and contributors to general progress. The part of the protective tariff which we need to get rid of is the part that helps decisively to put the element of monopoly into them; and in that connection the worst charge that has to be brought against this part of the duties remains to be stated.

Monopoly acts squarely against the continuance of that very progress which the tariff was designed to create. The entire defense of protection has rested on the dynamic argument, and the sole justification of the tax which protection originally imposed is the fact that it has given us industries which have in themselves the power to become more and more productive. It would be hard to deny that much of this increase in productive power which the originators of the protective system anticipated has been practically realized. The manufactures which have been carried through a period of weakness have actually developed competing strength. We have acquired the power to make things far more cheaply than anyone could formerly make them, and the cheapening process still goes on. Thanks to the progressive character of these industries the waste which attended the introduction of them has been largely atoned for. On dynamic grounds and solely on those grounds has the policy of protection fairly well vindicated itself. And now we have come to the point where that saving element in the protective system is in danger of vanishing. Indeed the excessive part of the protective tariff now acts positively to check the progress that it once initiated, for monopoly is hostile to that progress. The whole force of the argument based on mechanical invention and the development of latent aptitudes in our people now holds as against the monopoly-building part of the tariff. Keep that portion of a duty which is not needed to save an independent producer from foreign competition, which is needed only to enable the trust to charge an abnormal price and still keep the foreigner out of our markets, and you build up a monopoly which is unfavorable to continued improvement in the productive arts.

Competition is the assured guaranty of all such progress. It insures a race of improvement in which eager rivals strive with each other to see who can get the best result from a day's labor. It puts the producer where he must be enterprising or drop out of the race. He must invent machines and processes, or adopt them as others discover them. He must organize, explore markets and study consumers' wants. He must keep abreast of a rapidly moving procession if he expects to continue long to be a producer at all.

Does a monopoly live under any such forward pressure? Certainly not. It may make some improvements, for it can gain wealth by so doing; but it is not forced to make them or to perish. Here we encounter a wide distinction that is in danger of being overlooked. A vast corporation that is not a true monopoly may be eminently progressive. If it still has to fear rivals, actual or potential, it is under the same kind of pressure that acts upon the independent producer — pressure to economize labor. It may be able to make even greater progress than a smaller corporation could make, for it may be able to hire ingenious men to devise new appliances and it may be able to test them without greatly trenching on its income by such experiments. When it gets a successful machine it may introduce it at once into many mills. Consolidation without monopoly is favorable to progress. With the element of monopoly infused into it, a great consolidation frees itself from the necessity for progress, and both experience and *a priori* reasoning are against the conclusion that, under such a régime, actual progress will be rapid. The secure monopoly may stagnate with impunity, and the reason why many corporations which have looked like monopolies have not actually stagnated is that their positions have not been thus secure. They have had some actual rivals and many potential ones. The part of the protective system which tends to make them more secure in their monopolistic position strikes at the most vital part of the industrial system, the progress within it, the element which adds daily to man's power to create wealth and enables the world to sustain an increasing population in an increasing degree of comfort. True monopoly means stagnation, oppression and what has been called a new feudalism, while consolidation without monopoly means progress, freedom and a constant approach to industrial democracy. One of the essential means of securing this latter result is the retention of so much protection as is needed to keep American ingenuity and organizing power alive and active while abolishing that excess of it which fosters monopoly and does away with the necessity for exercising these traits. There will be disagreement as to the point at which the dividing line should, in particular cases, be drawn; a protected interest will claim a duty of fifty per cent where twenty would amply suffice and where every

excess above this would be pernicious. There should, however, be no serious disagreement as to what we want — progress and the repression of monopoly which bars progress; and there should be little disagreement as to the principle to be followed in making a protective system contribute to these ends. It must assuredly not bar out the foreigner when the American trust has put its prices at an extortionate level and is using its power to crush all rivalry at home. The good effect and the evil effect of an excessive duty are quite distinct in principle, and the task that is before us is to make them so in practice. It is to abolish the monopoly-building part of the protective system.

The whole question of the relation of the tariff to monopoly presents debatable points, some of which can not here be discussed. It is by no means claimed that an unnaturally high tariff is the sole means of sustaining monopolies, or that the reduction of it would leave nothing more to be done. A great corporation, as has already been said, possesses special means of waging a predatory war against local rivals, and its monopolistic power depends on these as well as on the tariff. With the foreigner forced off the field the trust can use with terrible effect these means of attack on local rivals. It is true that its monopolistic power might be greatly reduced, without touching the tariff, by taking from it its command of freight-rates and thus destroying its power to undersell rivals by means of the special rebates which it now receives; and its power for evil might be reduced still more by taking from it its privilege of cutting prices on its own goods in one locality while charging elsewhere the high prices which the exclusion of the foreigner enables it to get. Regulating trusts by these means only and without any change in the protective system would require, on the part of the people, a long continued struggle. It would require heroic persistence in a course of difficult administration. Success will come more quickly and easily if, while keeping a normal amount of protection, we abolish the abnormal part of it. The other measures for controlling trusts harmonize with this one and will work more effectively if they are used in combination with it.

Without going into any intricacies one can see that, with the tariff at a normal level, the success of the trust in making money

will depend on its efficiency as a producer; and the same will be true of its independent rivals. Again and again it will then happen that new rivals will appear whose mills are far more efficient than many which the trust operates. They may even be more efficient than the best of the mills of the great combination. American producers and foreigners will be in eager rivalry with each other in seeking out means of reducing costs or — what is the same thing — increasing the product of a day's labor. Under the conditions here supposed, the trust will not be able to exterminate a really efficient competitor, and it will feel the stimulus of his rivalry in a way that will force it to be alert and enterprising in seeking and using new devices for economical production. The trust and its American competitor will alike feel the stimulus of the foreigner's efforts to surpass them both in methods of efficient production; and the outcome of it all will be a greater degree of progress — a more dynamic industrial world — than there is any hope of realizing while foreigners are excluded from our markets even when prices are there extortionate. Prices will be extortionate so long as the trusts are checked only by local rivals and are allowed to club these rivals into submissiveness and then hold the field in security. Keeping the foreigner away by competing fairly with him is what we should desire; but barring him forcibly out, even when prices mount to extravagant levels, helps to fasten on this country the various evils which are included under the ill-omened term, monopoly; and among the worst of these evils are a weakening of dynamic energy and a reduction of progress.

JOHN BATES CLARK.

MUNICIPAL ACCOUNTS.

A FIRST STEP TOWARD MUNICIPAL REFORM.

IT is a matter of common knowledge that in the administration of cities there has been much waste of revenue and of resources. It is frequently inferred that public officials have been faithless. If, however, we attempt to establish the truth of this inference, we encounter a serious difficulty: we are unable to determine at what points loss has occurred and to fix the responsibility. As a result of this condition of affairs, neither officer nor taxpayer is able to apply a remedy to prevent extravagance in the use of public funds or to insure fidelity of service. In such circumstances many of our most intelligent and public spirited citizens, after a few spasmodic efforts at reform, have resigned municipal politics to fate, while others, still struggling in the dark, are seeking a method by which intelligent direction may be given to public affairs. Intelligent direction, however, requires light — the light that may be shed by a better devised system of public accounts.

With the enlarged scope of private business, accounting has risen to the plane of professional service, the purpose of which is to devise methods of assembling the data of an enterprise in such manner as to give the best basis for administrative judgment. Without a system of accounts, successful management of even our smaller concerns would be impossible. Many a bankrupt may trace his downfall to the ignorance which comes from failure to provide a means of enlightened control.

A city carries on business of large proportions — a business so complex in its organization that without a complete system of accounts it is almost impossible for officers to perform their duties with intelligence. It is highly creditable to American public officials that in the absence of systematic accounts, and without the knowledge that might be gained through permanent tenure of office, public affairs have on the whole been even tolerably administered.

It may be assumed as self-evident that for an intelligent under-

standing of the affairs of a municipality the public corporation should be recognized as acting in two distinct capacities: as a proprietor and as a trustee for the administration of institutions privately endowed for public ends. In each of these two relations there should be a separate and distinct financial record and account. Moreover, it is clear that in both relations, it is of primary importance that the data presented should throw light, first upon the economy and efficiency of administration, and secondly, upon the fidelity of the officials in their administration of public properties.

Scientific methods of accounting were first evolved in private enterprise. For this, exact knowledge and sound judgment were necessary to survival. In private enterprise, some method which would guard the fidelity or faithful accounting for assets and liabilities and which would insure the strictest economy was prerequisite. As government and the control of public corporations became more popular, and as the commercial and industrial classes gained and exercised a dominant influence in public affairs, rules of private thrift were gradually translated into principles of public administration. With the growth of a demand for clear statement of the doings of officers and corporate trustees, the methods of financial analysis evolved and employed in private business have been to some extent applied to municipal affairs.

In the development of the methods of accountancy there have been four distinct steps. (1) In small enterprises in which every transaction came under the direct oversight of the proprietor, the records were incomplete and unsystematic. (2) As enterprises became more complex, it became necessary to entrust certain portions of the business to agents and representatives, and to resort to a form of partial or incomplete accounts, giving a statement pertaining to properties and liabilities or to relations of business fidelity. Examples of this kind of accounting are found in institutions which keep nothing but a cash book. Such a system continues to be used in some small private businesses, and it is the system in vogue in nearly all of our American cities. It is also the present method of the British imperial government as well as of our own state and federal governments. This is what may be termed an incomplete method of single entry accounts.

(3) A still higher development in private business has produced what we may term a complete single entry system: a system of record in which all the data of financial transactions are first collected in memorandum form and then coördinated in statements of final account, but still a system in which the accounts have to do with categories of proprietorship and official trust only. By such a method a strict account may be had of assets and a statement may be made of liabilities outstanding. This method is well adapted to holding officers and agents to strict account, but it contains no principle and involves no classification of items which will give information with respect to any relation of administrative economy. (4) The need for statements which would reflect the various transactions and state them in summaries of expense and financial return, so as to make clear the relation of cost to amount of service rendered, and thus determine the efficiency and intelligence of management, led to the introduction in private business of what is known as the double entry system of accounts. This method or system has two distinct categories: those of proprietorship and official trust, or asset and liability, and those of economy of administration, or expense incurred and income accrued. In the first application of such a system to public accounts, however, the records are necessarily incomplete. Omissions are made of certain transactions and financial relations, and it may take years of experience before these are given their proper place. Numerous examples may be given of such omissions. The more important are: failure to set up reserves against current revenues where for good reason a current expenditure may not be made; failure to account for depreciation; failure to record accruals of interest; failure to record accruals of expense of administration on uncompleted contracts; and failure to set up judgments against the city as a part of current expenses. The final development of this method of accounting is a complete double entry system, *i.e.* a method or system of collecting all of the financial data pertaining to the business and of classifying this under categories (a) of economy, and (b) of proprietorship and official trust.

The first marked advances toward modern public accounting were made in response to the need for publicity and for reliable summaries and statements of the financial condition of semi-

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The general facts which have here been cited call for the abolition of a certain part of the existing duties and the retention of another part, and they make the division between the two parts clear at least in principle. We want to keep one part of a duty whenever it protects an industry which is not yet mature but is on its way towards maturity. We want the industry because it is progressive in its wealth-creating power and will one day make an important addition to our national income. It is a dynamic agent — a factor in the progress we are making toward the unrealized goal of universal comfort. We do not want the other part of the duty, first, because we do not want monopoly. Any feature of our industrial system which is convicted of being simply a monopoly-building element is condemned by that fact to extinction, if the power of the people suffices to destroy it. Does this mean that the consolidations themselves are thus condemned? Do we not want great corporations with vast capitals? Assuredly we want them, for the sake of their economy and of their capacity for greater economy. With the element of monopoly taken out of them they will become dynamic agents and contributors to general progress. The part of the protective tariff which we need to get rid of is the part that helps decisively to put the element of monopoly into them; and in that connection the worst charge that has to be brought against this part of the duties remains to be stated.

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bursements the principal feature of account and report. Such a method never has reached and never can reach the main problems toward which municipal reform is directed. The purpose of accounts is to furnish the information necessary to intelligent administration; and to do this the accounts must be organized and classified in such a way as to reflect administrative problems. The cash book or treasury statement cannot serve this purpose.

Few municipal accounting officers have yet risen to the dignity of professional accountants. Most of them are in temporary political positions and have received their places as a reward for partisan service. If we judge from the results of their work, the conclusion is inevitable that few of them have such a knowledge of the principles and methods necessary to a complete double entry municipal accounting that they appreciate the futility of the cash book system. Even in cities like New York and Boston, the cash book is still retained as a central feature of account and report. The published statements of those cities show little else than the flow of cash as it is exhibited in summaries of receipts and disbursements. The additional information given bears on relations of fidelity and proprietorship; little or no information is furnished that can guide administrative control. It is still assumed that the chief aim of municipal accounts and reports is to show whether fiscal agents have gone wrong. Neither the municipal officers nor the taxpayers have any means of determining current expenses incurred or revenue accrued. There is no intelligible basis for appropriations; no means of ascertaining revenue surplus or revenue deficit, as distinct from cash balance; no logical basis for budgetary estimates from which a rate of taxation may be determined.

The obstacles in the way of the introduction of better systems of municipal account are many. In the first place, a clear appreciation of the need is not general even among the most enlightened citizens, nor, for that matter, among political scientists. Many still cling to the primitive method of control, restricted political power, failing to recognize the advantages of centralized official direction and of better equipment for intelligent and effective administration. The underlying principle in a government of divided executive powers is to insure fidelity by pitting one officer or department against another. This method assumes

excess above this would be pernicious. There should, however, be no serious disagreement as to what we want — progress and the repression of monopoly which bars progress; and there should be little disagreement as to the principle to be followed in making a protective system contribute to these ends. It must assuredly not bar out the foreigner when the American trust has put its prices at an extortionate level and is using its power to crush all rivalry at home. The good effect and the evil effect of an excessive duty are quite distinct in principle, and the task that is before us is to make them so in practice. It is to abolish the monopoly-building part of the protective system.

The whole question of the relation of the tariff to monopoly presents debatable points, some of which can not here be discussed. It is by no means claimed that an unnaturally high tariff is the sole means of sustaining monopolies, or that the reduction of it would leave nothing more to be done. A great corporation, as has already been said, possesses special means of waging a predatory war against local rivals, and its monopolistic power depends on these as well as on the tariff. With the foreigner forced off the field the trust can use with terrible effect these means of attack on local rivals. It is true that its monopolistic power might be greatly reduced, without touching the tariff, by taking from it its command of freight-rates and thus destroying its power to undersell rivals by means of the special rebates which it now receives; and its power for evil might be reduced still more by taking from it its privilege of cutting prices on its own goods in one locality while charging elsewhere the high prices which the exclusion of the foreigner enables it to get. Regulating trusts by these means only and without any change in the protective system would require, on the part of the people, a long continued struggle. It would require heroic persistence in a course of difficult administration. Success will come more quickly and easily if, while keeping a normal amount of protection, we abolish the abnormal part of it. The other measures for controlling trusts harmonize with this one and will work more effectively if they are used in combination with it.

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be sold, in the end, at prices fixed by the costs of production, including the normal rate of interest on the capital employed. Manufacturers may originally get large profits, as an offset for such risks as they take in doing pioneer work; but afterwards they will get interest on their capital and a good personal return for directing their business, but nothing more. If they sell goods at prices which yield only such returns as this, they will, when the industry is on its feet, sell them as cheaply as the foreigner would do. The high duty, if it still continues, may make it doubly difficult for the foreigner to come into our market; but with goods selling at natural or cost prices he would not come into it in any case and the duty might be abolished with entire impunity.

There are indeed some questions which arise as to occasional unloading of extensive stocks in foreign markets, and protection has been called for to prevent the foreigner from making America his "dumping ground." This process works in both ways: the American can dump his surplus products into foreign territory as well as the foreigner can into American territory. Not much attention need be paid to this particular phase of the subject. Conservatism will probably suffice, for a long time, to retain in force a somewhat higher duty than is called for on general grounds. In the main the fact is as stated: if the protected infant has the capacity for growth that was attributed to him when the course of nursing, coddling, training and patient waiting was entered upon, he will announce that fact after a term of years by showing his inherent strength and proving that these fostering practices are no longer necessary. They are then needed only to aid a monopolistic power within the industry.

It appears, then, that duties have two distinct functions. One is to protect from foreign competition an industry as such — to shield every producer, whether he is working independently or in a pool or trust. The other function is to protect a trust in the industry — to enable a great combination working within the limits of the United States to keep that great field to itself and still charge abnormally high prices for its products. In fact a distinguishable part of a duty usually performs the former of these functions and another distinguishable part performs the latter. If the natural price of an article is based on the cost of making it in

the United States, and if that is twenty per cent higher than the cost in a foreign country, a duty of twenty per cent will place the American product and the foreign product on an equality. The American maker will not be driven from his market until he begins to charge an abnormally high price. If he does that, the foreigner will come in. Suppose, then, that the duty is forty per cent. Twenty per cent may be needed to enable the American manufacturer to hold his own as against the foreigner. Provided he exacts from consumers of his goods only the natural returns which business yields, year in and year out, he can sell all that his mills produce with no danger that the foreigner will supplant him. The other twenty per cent of duty enables him to add a monopolistic profit to his prices. He can raise them by about that amount above what is natural before the foreigner will begin to make him trouble.

The trust has its own peculiar ways of stifling competition within the limits of our own country, and these ways are sufficiently familiar. There are the favors which it is able to get from the railroads and there is the practice of selling its goods in some one locality at a cut-throat rate whenever a competitor appears in that locality. There is the so-called factor's agreement, which often forces merchants to buy goods of a certain class exclusively from the trust. By these means and others the trust makes it perilous to build a mill for the purpose of competing with it. If, indeed, it makes its prices very high, some bold adventurer will build such a mill and take the chances that this entails; but if the trust stops short of offering such a tempting lure in the way of high prices, it can keep the field to itself. If the extra duty of twenty per cent did not exist, nothing of this sort would be possible. The trust would have to sell at a normal price in order to keep out the foreigner, and so would its independent competitor. Both the combination and its rivals could make their goods and sell them in security. The industry as such is protected by the duty of twenty per cent, and it is the additional duty which is the protector of monopoly — the enabling cause of the grab which the trust can make from the pockets of the consuming public.

In practice one would not try to make the figures quite as exact as is implied in the statement that just twenty per cent of

THE CLEVELAND PLAN OF SCHOOL ADMINISTRATION.

THE efficiency of public school administration in our states has by no means kept pace with the growth of our country. The board plan, as it was developed in New England villages, has spread to all the states, and has quite universally remained in its primitive form, little effort being put forth to modify and adapt it to the complex needs of the constantly growing populations in our great cities.

The usual city board is composed of one or more members elected from each ward. There is rarely a business director, and the superintendent of instruction has practically no power except to recommend. The board is large and clumsy; there is no centralization of energy, no fixed responsibility; all the work is carried on by committees. Under such conditions, coördination and system are impossible. Political exigencies rather than the needs of the schools are emphasized in the choice of candidates for board membership. Each member looks upon himself as a representative of his particular constituency, and is willing to log-roll and intrigue for the sole benefit of his own ward. Political motives are allowed to dictate the choice of teachers. What is a fairly good method of administration in a village, where public scrutiny is severe, utterly fails in a city where the great public is less vigilant. The ultra-democratic sentiment which frowns upon appointive offices and the holding of offices for long terms, and which does not desire the centralization of responsibility, has wrought much harm in our school administration.

The problem of school administration is dual in its nature. There is first the purely business side, the levying and gathering of taxes, the erection and maintenance of buildings, the making of the budget and providing for all the details of expenditure. As the public pays the taxes it is commensurately interested in their distribution, and should have a voice in the choice of the officers who determine the investment of these funds. On the other hand, board responsibility is too lax for efficient financial

administration. One man should be held responsible for the financial management. The problem is to combine the two elements of public control and centralization of power.

There is, secondly, the professional or educational side. This is of peculiar importance, for it includes the training of the future citizen. Here certainly extraneous influences should be minimized and purely professional control established. But here also the public is interested, for the development of the child-mind is of the greatest public concern. So here also the problem is to combine social control with responsible professional administration.

This desirable union of popular control and professional efficiency is not and apparently cannot be secured under the ordinary board plan. I recall an experience of flagrant political interference with the efficient work of the schools in a city of 50,000 inhabitants, which illustrates the vital weakness of the usual board control. A teacher had been discharged by the superintendent because of inefficiency. The discharged teacher was a relative of one of the union labor leaders of the place, who at once commenced systematic agitation. One of the two great parties nominated members for the board who were pledged, if elected, to oust the superintendent. The entire labor vote was enlisted in this cause, and only the polling of a heavy vote by the women saved the schools from the disgrace of purely political control of the professional force. This instance is not exceptional. Every city has had some experience of political interference, not merely with the purely business affairs of the school administration, but also with the appointment of teachers. The great problem of public school administration is to take the schools out of politics and still maintain popular control. To accomplish this end there has been in recent years quite a general movement in the largest cities to reduce the size of the board and either elect it at large, or allow the mayor to appoint it. This movement has received the almost unanimous approval of educators.¹

¹ Sixty-seventh Annual Report of Cleveland Board of Education, p. 21. Proceedings of the National Educational Association, 1894, p. 707; 1896, p. 974; 1897, p. 988; 1900, p. 633. *Educational Review*, June, 1900, vol. xx, pp. 61 *et seq.*

The experience of Ohio and particularly of its metropolis, Cleveland, sheds some light upon the difficulties of this problem and the method of solving it.

The only plan for a state system of education, coördinate and uniform, that ever was framed into law in Ohio, was the plan evolved by the first state superintendent of schools in 1837.¹ After two years of successful operation, the plan was abandoned by the legislature, because it gave too much power to the superintendent and tended to focalize responsibility. Since that day the development of school administration in the state has been haphazard, like the straggling growth of a country town. There has been no county supervision, practically no state supervision, and no concerted plan for city supervision. Every county has remained an isolated unit. The larger cities have evolved their own plan of control, largely based upon political bias. Every county and every city has its own examining board for teachers, and these have absolutely no relation one to the other. It frequently happens that a candidate for a teacher's certificate who has failed to pass the examination in one place passes it in the neighboring county.

While the district has always been the unit of school administration in Ohio, there has been no scientific attempt to coördinate the various districts. On the contrary the most confusing complexity has arisen, largely because of the practice of resorting to special legislation. As early as 1851 there were one thousand more districts in Ohio than in New York, though the latter state was older and larger both in area and population.² In 1890 the legislature attempted to create, out of the maze of school legislation, a classification of districts. The result was as follows:

1. City districts. (a) First class, first grade: Cincinnati. (b) First class, second grade: Cleveland. (c) First class, third grade: Toledo. (d) First class. (e) Second class. 2. Village districts. 3. Special districts. 4. Township districts. 5. Sub-districts.³

The absurdity of such a grouping of school authorities is more evident when it is remembered that these districts overlapped

¹ 35 Ohio Laws, 82.

² Twenty-fifth Annual Report, State Commissioner of Schools, p. 53.

³ 95 Ohio Laws, 115.

each other; that the authorities of the overlapping districts often clashed; that there were no guiding and coördinating forces above them except the voluntary associations of teachers; that each variety of district, and usually each special district, had its own form of school administration; and that there was little attempt, in all this mass of special legislation, to adapt the size of the district to the needs of the locality.

In June, 1902, the state supreme court declared every municipal government in the state unconstitutional,¹ on the ground that special legislation was prohibited by the constitution.² This overthrew the city school districts. In a subsequent decision, the court held that the creation of school districts by special legislation was unconstitutional.³ This last decision cut the roots of the whole adventitious and amorphous growth.

With such a multiplicity of administrative units, the management of school affairs was inevitably loose and clumsy. The boards, moreover, were so large as to be unwieldy. In 1836 there were 38,740 school officers in the state, a fair proportion of the entire population.⁴ This number was greatly diminished through the legislation recommended by the first state superintendent of schools. Still the number of school officers was inordinately large; in some rural districts, indeed, there were often as many officers as there were pupils. In some counties the authority of the township district officers clashed with the authority of the local or sub-district officers. The resulting contentions were not conducive to the betterment of school administration.⁵

This chaotic condition of the schools of a great state is not so much the result of misguidance as of non-guidance. Neglect is the sin of which the legislature has been guilty, in dealing with

¹ State *ex rel.* Kinsley *et al.* v. Jones, and State *ex rel.* Attorney-General v. Beacom, 66 Ohio St. 453, 491.

² Art. xiii, secs. 1 and 6; art. ii, sec. 26.

³ State *ex rel.* Wirsch v. Spellmire, 67 Ohio St. 77. In this case a special school district had been created from portions of two counties and four townships. The court held that "the subject matter of schools, including school districts and establishing and changing the same, is of a 'general nature,'" and that laws regulating this matter must therefore be of uniform operation throughout the state.

⁴ First Report, State Superintendent of Schools.

⁵ Fifty-fourth Report, State School Commissioners, p. 34.

the school problem. In 1844 the secretary of state, who was also styled the state superintendent of schools, and who, in this capacity, possessed but one power, *viz.* that of gathering educational statistics, said of the schools: "No other interest of the state has been so fearfully neglected, and any other visited with such chilling indifference would have hopelessly perished."¹ Subsequent state commissioners of education perceived and stated the result of Ohio's neglect:

Other states have gone on improving and perfecting their school system while Ohio . . . has seemed almost to stand still. In essentials she has done nothing in the way of legislation within the last thirty-five years.

The weakness of the Ohio school system lies in the lack of system and superintendence.

Ohio can never have a school system commensurate with her greatness as a state, until she has placed her country schools under intelligent supervision.²

Ohio is one of the five or six states of the union which do not maintain a state normal school. Until 1902, when normal departments were created in two of the state universities, no special instruction for teachers was provided. The lack of trained teachers is reflected in the inefficiency of the schools.

It is surprising that under such conditions there could be developed in Ohio a plan of board government that has been pronounced a model by experts in administration and by our leading educators.

Cleveland was settled by New Englanders, who carried with them into the forests of the Western Reserve that high esteem, almost reverence, for the public school that has been so marked a trait of the New England colonists. The first high school west of the Alleghanies was established in this city. Cleveland's schools have always been superior to those in other parts of the state. This superiority, however, was not due to any particular system of board control; it was the result of an alert and en-

¹ Executive Documents, 1844, No. 31.

² Thirty-fifth Report, State School Commissioners, p. 17; Thirty-first Report, p. 5; Thirty-ninth Report, p. 17.

lightened public opinion. As the city grew and the great foreign influx changed its political complexion, interference of the political manipulator in the election of board members became, as elsewhere, the rule. In 1890 Cleveland asked for and obtained a new form of municipal government, modeled strictly on the federal plan. This worked so well that two years later a committee of citizens framed a school code along the same lines and asked the legislature to enact it into law. This was done. It marked a new departure in the administration of city schools.

The law¹ is brief and very simple. School control is divided into three branches, legislative, executive and professional. The board of education consists of the council and a director. The purely legislative work devolves upon the council. This is composed of seven members elected at large for two years. The council elects a president and a clerk, the latter receiving a salary of \$2,000 a year. All matters affecting expenditure come before the council, excepting that the director can make contracts for less than \$250 without the concurrence of the council. All other purely legislative powers are vested in the council. The director is the executive officer, and herein lies the novelty and a large part of the efficiency of the plan. He is elected for two years, by popular vote. He receives a salary of \$5,000 a year and must give bond for \$25,000. With the approval of the council, he appoints the superintendent of instruction. He has charge of the execution of all contracts, supervises the erection of buildings, furnishes supplies, sees that the schools are provided with the necessary apparatus, and appoints all the employees of the board except the teachers. He has a veto upon all resolutions passed by the council pertaining to any expenditure of money, to the approval of contracts, to the purchase or sale of property, to the levying of taxes or to the adoption of new text books. The council can pass such resolutions over his veto, but only by a four-fifths vote. Furthermore, the director can at any time remove the superintendent of instruction for "sufficient cause." "But the order for such removal shall be in writing, specifying the cause therefor, and shall be entered upon the records of his office; and he shall forthwith report the same to the council, together

¹ 89 Ohio Laws, 74.

with reasons therefor." The wide powers granted to this officer reduce the powers of the council to a minimum. He is much more than a mere business agent of the board, he is truly the director. The large majority necessary to override his veto is practically unattainable in ordinary routine matters; and even in the letting of large contracts and the conducting of great expenditures his power is practically sole.

By a proceeding in probate court, the director and any member of the council may be impeached by any elector.

The educational work is under the control of a superintendent of instruction, who is appointed by the director, and the law contemplates that he shall "remain in office during good behavior." He has the power to appoint and discharge all teachers. He practically arranges the course of study, and has supreme control of the purely educational side of the school administration. The only limitations upon his authority are the power of the council to determine the number of teachers and the power of the director to depose him for cause. He must attend the meetings of the council when his presence is requested, but he has no vote in that body.

Under this system the government of the schools is practically independent of the city government. It is a separate administrative organization. The only point of contact with the city government is in some of the minor details of finance, and even in these the school board is independent of the city council. They are coördinate bodies, and are alike subject to the supervisory powers of the board of tax commissioners.

This board consists of four electors appointed by the mayor for a term of four years. The mayor is to select persons "well known for their intelligence and integrity;" and not more than two are to belong to the same political party. They receive no pay. To this commission are submitted all tax levies made either by the city council or the school board. It may approve or reject any part of the levies, but it cannot increase them. Its action is final in regard to the levies made by the school board, but the city council can by a three-fourths majority override its action in matters pertaining to the general levy.¹

¹ Ohio Municipal Code, §§ 24 and 46.

Subject to the control of this revising commission, the school board has the general power to levy taxes and to legislate concerning financial matters. The law imposes upon it only the following limitations: the levy must not exceed seven mills; no contract shall be entered into or expenditure voted unless the auditor has first certified that the money is in the treasury;¹ and no appropriations are to be made for a longer period than one year. Within the board itself, as has already been stated, the director has the power to veto any financial resolution.

The treasurer of the city is the custodian of the school funds, and the auditor of the city is the auditor of the board. The law details, in the customary way, the method of drawing the funds. The auditor reports annually to the director, and this report is examined by a committee of three composed of the corporation counsel and two "suitable persons" appointed by the court of common pleas. This committee has the power to subpoena witnesses, and is supposed to go into great detail in its investigations. Each member receives five dollars per day for the time thus employed.² There is also a sinking fund commission appointed by the board of education, which has control of the fund accumulating to meet the bonded obligations of the school board.

This arrangement assures autonomy in school finance without sacrificing proper supervision over the levying of taxes. It is important to note that this supervision is not exercised by the city council or any executive department of the city government, but by independent authorities. The school administration is not responsible to a city department, but to the people.

To recapitulate: the Cleveland plan reduces the board to seven members, elected at large, and reduces the powers of the board to the lowest terms; it centralizes the business responsibility of school administration in one officer elected by the people and not responsible to the city government; it protects the teaching force against political influences by giving to the superintendent entire control of the educational work. How has the plan worked during the twelve years since its inception?

First, as to the business management. This has been generally satisfactory, and has commended itself after thorough and

¹ Ohio Revised Statutes, § 3899, 19.

² *Ibid.*, § 3899, 16.

impartial investigations, to the conservative business interests represented by the local chamber of commerce. The only shadow cast over the office of director, and over the business appointments made by the director, was due to a political interloper, who really had the welfare of the schools at heart but had neither the ability to see the educational needs of the community nor the good judgment necessary for a successful business administration. He was tolerated in office by the voters for one term only. With this exception the directors have been men of marked ability, who had been very successful in their private pursuits. And the tendency is to keep a good director in office. There have been only three elected during this period. The first one was reelected three times and the present incumbent is serving his second term.

There have been no scandals connected with the financial administration of the schools. And this is perhaps as good evidence as can be secured of the cleanness of the business management. For what other city of 400,000 inhabitants has made twelve years of school history without some scandal of misappropriated funds?

The material equipment provided by the director is adequate and modern. The city maintains a normal school, a school for deaf children, five high schools, six manual training schools, and seventy-eight elementary schools.¹ These schools, during the past year, were conducted by 1,484 teachers and were attended by 62,874 pupils.² The total disbursements from the director's office were \$2,508,698.81;³ of this amount \$1,731,427.81 were for operating expenses.⁴ A competent architect is employed as superintendent of buildings, and the excellent condition of all the school buildings bears testimony to the thoroughness and conscientiousness with which he does his work. This architect also prepares all plans for new buildings, and supervises their construction. He receives a salary, and by this arrangement much of the wrangling that usually attends the erection of public buildings is avoided.

It is a common complaint in our large cities that school facilities

¹ *Hand Book of Board of Education*, 1904, pp. 50-54.

² *Sixty-seventh Annual Report, Cleveland Board of Education*, p. 87.

³ *Ibid.*, p. 118.

⁴ *Ibid.*, p. 191.

are inadequate, and at the opening of every school year there are hundreds of unhoused school children. This complaint is not common in Cleveland. While it has been necessary sometimes to procure temporary quarters, the directors have, on the whole, provided adequate room for all. And this in the face of the fact that the population of the city has increased by more than thirty-five per cent in the past ten years. On the whole I think it can be asserted that the business administration has been both honest and effective, capable men being attracted to the office by the substantial salary and wide powers accorded to them.

Nor has the school board abused its power in the levying of taxes. Only once has there been a serious clash with the board of tax commissioners. The committee appointed to examine the auditor's report last year, after an unusually rigorous investigation, said:

Our investigations warrant us in saying that the present business management of the schools has been careful and economical. There are evidences on every hand that attention has been paid to the details of contract and purchases in such a way that the money expended by the board and in its behalf has been providently and carefully protected and expended.¹

Secondly, as to the efficacy of the educational work. In this department the importance of wise supervision is paramount. The city has been fortunate in its selection of superintendents. There have been three of these during the past twelve years, all of them eminent in educational circles. Two of the superintendents resigned to accept college presidencies; and the present superintendent, who has held the office for four years, has been connected with the Cleveland schools for many years. A wise and energetic superintendent, with the power of choosing and directing his own force of teachers, is almost certain to create a model school system.

A board of supervisors, appointed by the superintendent, passes upon the qualifications of all the teachers. There are very few removals, such care having been exercised in the appointment of the teachers that their tenure is practically permanent. That the teachers themselves feel this was shown some years ago, when a

¹ *Ibid.*, p. 200.

plan was prepared, contemplating a permanent tenure with a pension after a given length of service. The teachers, by a very large majority, rejected the plan, preferring the present arrangement, wherein promotion depends upon ability rather than length of service.

In the autumn of 1903, when an agitation began for the extension of the Cleveland plan over the entire state, the teachers of Cleveland were asked to give in writing their opinion of the present plan. The superintendent addressed a letter to every teacher, requesting a perfectly frank expression of opinion and stating that the individual replies would in no case be made public. Over ninety-five per cent of the teachers expressed, in strongest terms, their preference for the present plan of professional control. This feeling of confidence and security is no small factor in the success of the teacher's work.

The present superintendent adds his own testimony:

Under this law and with this organization, the schools have prospered beyond the most sanguine expectations of their friends. The supervisors, principals and teachers at once felt a security in their positions never before realized. They had a sense of freedom in their work that inspired them to high endeavor. Their best efforts were toward self-improvement, a broader culture, and a larger knowledge of the things pertaining to their profession. The results of these efforts have placed the schools upon a higher plane and given the pupils a wider view educationally. All connected with the educational department believe thoroughly in the federal plan and that it is an advanced step in school organization. The law has proved so good a thing for the Cleveland schools that we would like to have it extended to the public schools of all the cities of the state.¹

Thirdly, has the public interest in the schools been maintained? Advocates of the large board assert that public interest in the schools increases in proportion to the size of the board. Cleveland's experience does not verify this conclusion. At no time has public interest been more keen and wholesome than at present. Every change in the policy of the director or superintendent is followed with intelligent interest. The members of the council

¹ Sixty-seventh Annual Report, Cleveland Board of Education, p. 26.

are elected at large, and are thus the representatives of no one section or class, but of the entire city. On the only occasion when political animosity threatened the well-being of the schools, the voters came magnificently to the rescue, casting aside all party affiliations and rebuking the narrow and baneful policy of an unwise official. The wonderful uprising of the citizens during the past winter, when it was reported that the governor had given his sanction to a measure that would foist a large board upon the city, in obedience to the commands of a political boss from another city, gave striking evidence of the interest which the public takes in the welfare of its schools.

I do not think that the size of the board has anything to do with the degree of public interest in the schools. Even under an appointed board such interest is maintained in San Francisco and in some other cities. The schools touch intimately the home life of the community, and it is through this living contact that universal interest in the conduct of the schools is created and maintained.

Finally, does the Cleveland plan keep politics out of the schools? Of course the director and council are elected, usually, through the regular party machinery. Each party has its candidates; they seek votes, they make promises, they labor for the welfare of the ticket. This competition of the parties is in itself a considerable safeguard against the nominating of an unfit man when the parties are of about equal strength. The only avenue open to the politician, by way of which he can molest the teacher, is through the director's power to dismiss the superintendent of instruction. This power is well guarded against abuse. Only once in the twelve years during which the plan has been in operation, has any one been audacious enough to attempt to abuse it. The details of this attempt illustrate the safety of the plan and the outcome reveals the sensitiveness of the public conscience.

As I mentioned above, the first director held office for eight years. His administration was able and above suspicion. His party failed to give him another nomination, and in his stead it designated a candidate who, as soon as his name was placed upon the ticket, waged his campaign with the understanding that, if elected, he would remove the superintendent of instruction. This

called forth such universal condemnation that he was compelled to deny that such was his intention. This he did in a very equivocal statement, which however proved sufficient, for he was elected. In spite of his ante-election statement, the new director removed the superintendent, on the surprising ground of "incompetency, inefficiency, neglect of duty and misconduct." Charges were sent to the president of the council, but not to the superintendent. On the same day that this news was given to the public, the director appointed a new superintendent. This appointment was to be reported to the board for ratification on the very evening of that day. This hasty action startled the people, and public indignation was intense. A number of members of the board were persuaded to remain away from the meeting, thus preventing a quorum, and making it impossible to ratify the action of the director in appointing a new superintendent. Meanwhile a temporary restraining order was secured, enjoining the director from removing the superintendent, and ordering him to send the superintendent a copy of the charges and grant him a hearing. The director now sought legal advice from the corporation counsel, who was also the legal adviser of the school board. The advice was adverse to the action of the director, and was based on a decision of the state supreme court, which held that "sufficient cause" means a hearing, and that the power to remove under the given legal restrictions "cannot be exercised arbitrarily, but only upon complaint and after a hearing had, in which the officer is afforded opportunity to refute the case made against him."¹ The corporation counsel at the same time refused to act for the director in the injunction proceedings. The director's private counsel helped him out by finding a technical flaw in the petition.

The whole city was aroused by this unwarranted interference with the teaching force. The Republican press, which had advocated the director's election, was as determined in its denunciation as the Democratic press. All thinking citizens protested. All manner of professional and business organizations protested. The avalanche of condemnation frightened the offending director, and he wrote to the superintendent "revoking, cancelling and

¹ State *ex rel. Meader et al. v. Sullivan*, 58 Ohio St. 504.

annulling" his order of removal, and withdrew the charges which he had presented to the council. The following year the superintendent was elected president of one of our best state normal colleges, and the humiliated director went down to inglorious defeat.

Some political favoritism is perhaps shown in the appointment of janitors and other minor employees, but the range of political influence is not extensive. I find the universal opinion to be that the responsibility centered in the director has practically eliminated party politics from the business management of the schools. And the teacher is completely shielded against political influence. In no way has his security been invaded by party politics. It is the unanimous testimony of the superintendent, the director and the teachers themselves, that not in the remotest degree has the teaching force been subject to political manipulation. Merit is the basis of appointment and tenure.

In order to meet the situation created by the judicial decisions above noticed (p. 405), the Cleveland chamber of commerce caused a bill to be drafted, establishing the Cleveland plan in such general terms as to avoid the constitutional prohibition against special legislation. This bill was introduced into the state legislature at the last session. Few measures of general interest ever went to a legislature with more universal and intelligent backing. The state teachers' association, the schoolmasters' club, the state chamber of commerce, local business and professional bodies of all kinds and from all over the state endorsed the plan, after a careful examination of its working in Cleveland.

Two general objections were urged against the measure. One was purely political; it was brought forward by politicians who desired to use the large board as a feeder to the party maw. They denounced a small board as "un-American." Sundry school-book concerns were loud in echoing this sentiment. Their attitude reminds one of Dr. Johnson's hard saying: "Patriotism is the last refuge of a scoundrel."

The other objection came from the rural districts and small towns. They were unwilling to have directors imposed upon them, because the school business in their districts was not sufficiently extensive to warrant maintaining such officers.

The former objection deserves only contempt. The latter might easily be met by allowing the local councils to determine the salary of the director.

The struggle for the enactment of the Cleveland plan began with the first week of the session, and ended only an hour before final adjournment, after several conference reports had been rejected, and after the criminating and recriminating speeches customary on such occasions had been delivered.

The new code is an unsatisfactory compromise. It provides a board of five members for all school districts of less than 50,000 inhabitants. In the larger districts, embracing the five large cities of the state, the size of the board may vary from seven to thirty-five; three to be elected at large and the rest from districts, which may vary in number from two to thirty. The present school board of each of these cities is to determine the size of the new board. This is a concession to both Cleveland and Cincinnati. The new board has supreme power over school administration. It may, at its option, appoint a director and grant him such powers as it sees fit. The superintendent is shorn of his authority; all his acts are subject to the approval of the board. He can be elected for no longer a term than five years, and his teachers can be appointed only with the approval of the board, and for a term of four years only. The financial powers of the board remain as at present.

Perhaps the enthusiasts for the centralized plan ought to feel satisfied with this compromise. It certainly is an advanced step for the rural and village districts. It is probable, however, that the new law will be declared unconstitutional, on the ground that it is not of "uniform operation throughout the state." In that case the legislature will again have an opportunity to develop a simple, efficient, centralized system of school administration, insuring definite responsibility as well as popular control, bringing the teaching force under purely professional direction, and placing the schools beyond the reach of the politicians.

S. P. ORTH.

CLEVELAND, OHIO.

STREET LABOR AND JUVENILE DELINQUENCY.

A PROGRESSIVE civilization tends increasingly to subordinate immediate needs to future and greater ends. The adequate protection of children demands the same large spirit: a subordination of immediate earning capacity in the child to his future physical and mental growth. Experience abroad and in this country has stamped premature labor as not only cruel but conspicuously short-sighted, an injustice to the child and an economic waste for the community. A gradual recognition of this truth is reflected in the slowly increasing legal protection of working children, as state after state ranges itself on the side of a self-interest more clear-sighted as well as more righteous. Like other reforms this has been impeded by individual interests and retarded by inertia on the part of the public; and to scrutinize the existing laws in their variety is to realize what great gaps remain to be filled before legislation for child workers shall exhibit an enlightened uniformity.

Up to the present time certain essentials have been embodied in the best child-labor laws. A standard is gradually evolving in which the most important measures of protection are defined. These may be briefly stated as follows:

1. A child should not be allowed to work under a certain age.
2. A child should not be allowed to work if it is illiterate or physically defective.
3. A child should not be allowed to work longer than a specified number of hours in the day and in the week, and never at night.
4. A child should not be allowed to work at any trade injurious to health or morals, or where there is dangerous machinery.

In America legislation for the protection of children has hitherto developed along these lines. The most advanced states are every year securing higher age limits, shorter hours and other ameliorations; but many of the states still fall short of even the minimum standard. It is of course necessary to extend such restrictions; but there is also imperative need for new measures — such measures, to mention three examples, as have been adopted in Eng-

land and on the Continent concerning home industries, the dangerous trades and the street trades.

Among the employments heretofore ignored by American legislators or but recently regulated are the so-called street trades. In the following pages the term is used to include the trades of the newsboy, the messenger boy and the child peddler. The three trades, thus classed under one head, differ widely, it is true, and no one protective measure applies to them all. Yet in so far as a life on the street is in greater or less degree their common characteristic, it is convenient to treat the three together.

The standing of these trades before the law has in the past varied in different states. Until the New York state legislature adopted, in 1903, a measure for the protection of the newsboy, this typical street worker was ignored in all the state laws which protect other child workers. The city of Boston alone had in 1898 adopted some ordinances in his behalf. The messengers have been cared for in some of the states by the same laws which deal with children working in shops. In New York the messengers were practically without the protection of any law before the legislation of 1903. The peddlers in New York and other states have been covered by some provisions of the Penal Code, but in New York the provision against peddling is inadequately drawn and fails to accomplish its object.

Before the legislation of 1903 the evils of the street trades in New York City, to which the following discussion is confined, had not been generally recognized. The investigation, however, which preceded that legislation brought out damaging evidence against these trades. The early ages of the street workers, the irregularities of their lives and the lawlessness of their environment were shown to be ruining a large proportion of the thousands engaged in such work. Street life, often defended as a school for sharpening the wits, was declared on the contrary to be chiefly a training for the reformatory. Some years ago, before the legislation for the street trades was enacted in England, similar testimony was there elicited. In a valuable parliamentary report on the earnings of school children (1901), the news trade is specifically designated "a hot-bed of vice and crime."

If this condemnation is deserved, if street workers tend to de-

generate into petty criminals, the proof should be found in those places of restraint to which boys are committed who have fallen into the hands of the law. How many of the boys in a given reformatory, for example, were, as a matter of fact, once news-boys or messengers or peddlers? Is their number large enough to indicate that the trade they followed led to their fall? Have the street workers been committed to reformatories in greater numbers than workers at other trades? To what moral dangers did their respective employments subject them? It was to answer these and similar questions that a careful study was made of the antecedents of boys at two of our largest reformatories: the New York Juvenile Asylum and the Catholic Protectory.¹

Those who have had occasion to investigate the condition of working children will appreciate the difficulty of getting correct figures or trustworthy statements of fact. The data herein used were obtained from the written statements of the boys; from a comparison of those statements with the records of the institutions in the case of the younger children — in the case of all boys of twelve years and below that age at the Juvenile Asylum, all boys of ten years and below that age at the Protectory; and from personal interviews with the boys — a source of information which proved more valuable than either of the others. The official records consist of a bald array of facts and were only of limited usefulness, serving to verify ages and other facts stated by the boys, but forming a meagre description of any individual. Fortunately the outlines of each case could be at least partly filled in by other means. The Juvenile Asylum visitor's personal acquaintance with many of the boys' homes enabled her to add illuminating facts regarding family conditions, the relation between parents and children and the need for the children's assistance. At the Protectory a valuable set of questions has been made out for the home investigation, covering the child's past and his home circumstances; but unfortunately this investigation has lapsed, owing to the death of the former investigator and to the fact that no suc-

¹ For the kind coöperation of the authorities of both institutions, thanks are due to Mr. C. D. Hilles, the superintendent, and Miss H. M. Hall, the visitor of the Juvenile Asylum; and to President Robinson and the Rev. Brother Henry of the Protectory.

cessor has yet¹ been found. It is greatly to be hoped that this important inquiry will again be undertaken, and that employment in the street trades will be included under "previous occupation." If also the question as to previous employment shall be added to the inquiries addressed to all newcomers at the Juvenile Asylum, when their past is still fresh in their remembrance, a valuable body of information upon child labor run to crime will be gathered for future reference.

In the following pages, newsboys, messengers and peddlers are separately treated, and facts regarding boys of the same trade, whether confined at the Protectory or at the Juvenile Asylum, are brought together. The home conditions of boys in the Juvenile Asylum are more often noticed, thanks to the more abundant information collected at that institution.

The newsboys. — It is often triumphantly asserted, in defence of the news trade, that not a few men of prominence have first earned a livelihood on the streets. That newspaper selling does not regularly lead to success is, nevertheless, indicated by the fact that in two of our largest reformatories, to speak of no others, ex-newsboys make up a large proportion of those who were engaged in any occupation before commitment.

At the Juvenile Asylum, it was found upon investigation that 311 of the boys confined there had worked at various trades before commitment. Of this number, 125 or forty per cent had been newsboys. At the Protectory, five classes of the senior department, comprising about three hundred boys, were questioned. Nearly forty per cent of these, *viz.* 110, had sold papers. This significant proportion of ex-newsboys in confinement raises a legitimate presumption against the trade.

The extreme youth at which many of them began to work is an item of significance. At the Juvenile Asylum the greater number began selling papers at ages ranging up to twelve years, as follows:

1 boy began at 4 years	9 boys began at 9 years
1 " " " 6 "	17 " " " 10 "
6 boys " " 7 "	17 " " " 11 "
8 " " " 8 "	21 " " " 12 "

¹ May, 1904.

This makes a total of 80 boys who began between four and twelve years of age, as against 43 boys who began at thirteen and fourteen years, and one at fifteen. At the Protectory the proportion of newsboys who began while very small is even larger:

1 boy began at 5 years	13 boys began at 9 years
4 boys " " 6 "	19 " " " 10 "
7 " " " 7 "	16 " " " 11 "
11 " " " 8 "	

The number who began at ages between twelve and fourteen is 36, and two began at fifteen. This gives a total of 109 ex-newsboys, of whom one-half, 55, started to sell papers when between five and ten years of age.

The employment of children at such tender ages leads one to presuppose dire need. Destitution and, in particular, the alleged necessities of widowed mothers in fact constitute the standard argument against any restriction of the street trades as regards children. In such cases it is generally maintained that any contribution that the child can make is not only justifiable, but commendable; that the claim of the widowed mother for assistance should be paramount. Indeed, the needy widow cannot fail to evoke sympathy and solicitude. Responsibilities and duties, often heavy for two to bear, fall to her unaided hands. Struggling for respectability or sunk in poverty, she has somehow to meet the problem of providing for her children.

The difficulty of the widow's lot must be granted; but it should be noted that the conspicuous hardship of her position has given to her claims an entirely unwarranted prominence. Children of widowed mothers are not, as is often assumed, typical of the whole class of newsboys. The number of children supporting their mothers has been grossly exaggerated. The statistics of the reformatories, corroborating the statements of careful observers, show that the children of widows who sell papers form but a small minority of the newsboys. Of 80 children at the Asylum between four and twelve years of age, those driven by destitution to sell papers numbered but 21, as against 60 for whose entry into the trade no such reason existed. Further, these 21 destitute cases include total orphans and the sons of disabled fathers

as well as of widowed mothers. Thus the children of widows make up less than one-fourth of the total number of Asylum newsboys, and as far as can be judged from the records, they make up less than one-fourth of the Protectory boys. Even if it were advisable to leave open the street trades without restriction as regards this minority, the claims of the remaining majority cannot for their sake be wholly ignored.

Moreover, even when the newsboy's assistance is sorely needed, his earnings are either so small as to be practically of no value to relieve destitution, or the contribution he brings, while temporarily a relief, is bought at too dear a cost. Two extreme cases may be cited to illustrate the first point. Harry M. was committed at the age of seven years. His mother, a widow, bought papers for him to sell every morning. He was too small to know where he had gone. "She just told me to stay out until they were sold," he said. His earnings usually amounted to ten cents a day. Michael D., a Protectory boy, began selling newspapers at nine years of age, and continued in the trade, on and off, for two years. He says that the most he ever made was thirty-five cents, and that his usual day's earnings after school were twenty cents.

In some instances, on the other hand, a boy can earn enough to relieve a poverty-stricken family. Isidore C., whose stepfather and mother were obliged to crowd a family of ten into three rooms, earned \$1.25 a day. The family income was somewhat increased, but the child was sacrificed in the process. He began to sell papers when six years old and continued to do so for four years. He never went to school, working often from seven o'clock in the morning until twelve at night.

In other instances we find small earnings made at an equally disastrous cost. William N.'s father was dead at the time when he became a newsboy, and his mother earned a little by sewing. He worked after school, bringing home about twenty-five cents a day. He soon joined a gang of boys who pilfered and stayed out at night, and was committed for ungovernableness.

It is futile to deny that some hardship will be inflicted by depriving destitute families of even the small assistance which the newsboy affords. The community, which refuses to sacrifice the

child to immediate needs, should see to it that some sort of substitute is offered. The public and private aid expended upon reformatory institutions might, in a wiser economy, be granted more freely to destitute widows in their homes. A former commissioner of charities in New York, Mr. Homer Folks, has insisted upon this point with all the weight of experience. He says:

The objection that is offered most frequently, and perhaps with most effect, to further restriction of child labor, is the alleged fact that in a great many instances the earnings of these little children are needed to supplement the incomes of widows [or] of families in which the husband and wage-earner may be either temporarily or permanently or partially disabled, and that without the small addition which the earnings of these little boys and girls can bring in, there would be suffering and distress. It would be easy, I think, to overestimate the extent to which that is true. . . . So we should not admit that that side is more serious than it is; but let us cheerfully, frankly, gladly add that there would be many cases in which the proposed legislation [for the restriction of child labor] would deprive many families of earnings from their children, and that we propose ourselves to step into the breach and provide that relief in good hard cash that passes in the market. . . . If larger means are necessary to support these children so that they need not depend on their own labor, by all means let us put up the money and not push the children for a part of their support before the time when they should naturally furnish a part of their support. . . . In the long run it is never cheap to be cruel or hard. It is never wise to drive a hard bargain with childhood.

This point was emphasized also in the English report of which mention has been made. Since 1894 children working on the street in England have been subject to certain broad restrictions as regards ages and hours. Manchester, Liverpool, Bradford and many other cities have since then by local acts taken further steps to regulate the street trades by the licensing system. The parliamentary report of 1901 urges the adoption of this system for newsboys through the whole country. Upon the subject of poverty it says in vigorous language:

It seems clear that the too early employment of children may, like the premature work of horses, injure their future capacity, and that what

is gained at the commencement of life is much more than lost at a later stage. Even on the lowest ground of financial interest, it is not cheap to work a child so as to cause him to be prematurely worn out. It is more economical to start him in life after a healthy childhood with powers that will last longer, and keep him to a later age from being dependent on others for his support.

And again:

We do not consider that for sums so small the sacrifice of the child's health and education and of all its play is justified. We should be sorry to maintain that children should be little egotists, thinking only of their own pleasures and advantages, and forbidden to give up anything for the good of their parents or brothers; but in this case the sacrifice is out of all proportion to the good. . . . Poverty therefore should, we think, not be legally recognized as an excuse for permanent absence from school . . . nor for permission to work more than is reasonably proper.

Poverty, as we have seen, accounts for little more than one fourth of the total number of newsboys in the two reformatories. For the work of the remainder, the great majority, a different explanation must be sought. It is found in two mutually dependent causes: the exploitation of children by their parents and the habit of truancy. Either one of these causes may operate alone to lead a boy to street life, but it is difficult to treat the two separately because truancy so often follows forced labor. The street environment generates habits of independence and of defiance, and truancy is practiced when street labor is no longer required.

Illustrations are not wanting of sheer exploitation by parents. Abraham S. of the Asylum began to work at the age of four years. He sold papers all day and sometimes until ten o'clock at night for almost eight years in succession, robbed of all the normal immunities of childhood. Upon investigation it appeared that the parents of this child were both living during these years, and were earning a good income from an oil and paint shop which they owned. A daughter of fifteen assisted them, and their small family lived in three rooms over the shop with an extra room on the first floor. The boy was committed at thirteen for petty lar-

ceny. Benny R., beginning at the age of eleven, sold papers for two years, working after school and sometimes until past midnight. His parents were both living. His father was so far from suffering destitution that he was renting houses and subletting them at a profit. Two older boys were earning good wages. Morris S. began to sell papers at eleven and continued in the business for two years. Sometimes he went to school, and sold papers from four in the afternoon until ten o'clock at night. At other times he worked from five in the morning until ten o'clock at night. His father earned eighteen dollars a week and the family of five lived in a good home of four rooms. He is now in the Asylum for stealing and pawning jewelry.

These children came of families in fairly comfortable circumstances. But poverty-stricken parents are equally guilty of exploitation when the child's wages relieve destitution caused by indolence or drunkenness, and in such cases the sacrifice of the child is equally indefensible. Two illustrative instances of this sort may be cited. Ignatius G. began to sell papers at the age of eight or nine years, working after school and sometimes until as late as midnight. His parents were both living. The mother earned from three to four dollars a week by washing; the father was intemperate and earned nothing, although able to get good wages as a plumber or tinsmith. The boy's earnings amounted to about fifty cents a day. Louis P. became a newsboy at eleven years. He sold papers after school hours and on Saturday from six in the morning until nine at night, making from forty to eighty cents a day. His father was a drunkard; his mother earned a little by sewing and received some outside assistance.

The truancy of the newsboy is often regarded as the picturesque side of his life. A spark of romance is supposed to attach to his unconventional ways: if his life is hard, it is full of interest and excitement. The disillusioning truth, however, paints a darker picture. It shows how truancy changes a trade which should be an honest means of wage-earning into an irregular or depraved existence, undermining health and morals. Observers agree in describing the newsboy's life as a round of irregular work, irregular sleep, irregular meals; often in close contact with the criminal class, which also lives in the thick of the crowd and finds apt

pupils in the newsboys. From the reformatory, so often the grim goal of the truants' adventures, comes the same testimony. It was the desire to be independent and to shirk ordinary duties which led many of the lads to the street trades and by degrees to serious mischief.

It is important to emphasize the fact that truancy, the boys' love of independence, cannot be isolated and considered as a separate cause of street work, distinct from other causes. Whatever the original cause which made them newsboys — destitution, exploitation or their own love of independence and of shirking — as soon as the boys are well in the trade, no hard and fast lines can be drawn between them. The conscientious schoolboy selling after school hours, the exploited little child driven to work by miserly parents or a drunken father, the toughened street Arab, all mingle in the ranks. Every influence makes for truancy, while the newsboys' homes are not usually of so attractive a character as to counteract these centrifugal forces.

The large number of commitments for ungovernableness bears witness to difficulties of control confessed by the parents themselves. Indeed, the helplessness of parents is perhaps the most startling fact brought out in the histories of these child workers. In the family records of the Juvenile Asylum there is constant complaint that the boys live as tramps for weeks at a time; while the lads themselves own in conversation that they rely chiefly on newspaper selling when they run away from home. A typical instance is Fred M. of the Juvenile Asylum. Evil habits and incessant cigarette-smoking were written upon his ravaged face and stunted figure. His lips were partially paralyzed, making his newsboy slang almost unintelligible. This poor product of the street began to sell papers at nine years, from morning to night for weeks at a time. He alternated this with other street trades, apparently never going to school. His father earned twelve dollars a week, enough to support his small family, but he had no control over the boy. In many cases the roving habit is contracted at even earlier ages. Of 55 Protectory boys between five and ten years of age, one-third were known as habitual truants.

It is evident, on examining the facts, that an important incen-

tive to truancy is the prevalence of late night hours. Night work and truancy may almost be said to go hand in hand. Staying out until midnight to sell the late editions leads easily to staying out for nights at a stretch. At the Protectory, of 55 little boys between five and ten years of age, 35 worked later than nine o'clock, many until midnight. Those at the Juvenile Asylum who stayed out later than nine at night somewhat exceed the number of those who stayed in after that hour.¹ The lack of any provisions concerning hours of labor on the street, such as are embraced in the English act of 1894,² has allowed night work at selling papers to develop to its present proportions.

To combat the spread of truancy there have been hitherto some vague provisions of the Penal Code, a provision of the Code of Criminal Procedure, and the Compulsory Education Law. The Penal Code declares guilty of a misdemeanor any person who allows a child under sixteen to engage in any "mendicant" or "wandering" occupation. It provides also for the arrest and commitment of any child found begging in any way upon the streets.³ The Code of Criminal Procedure declares in express terms that "any child between the ages of five and fourteen having sufficient bodily health and mental capacity to attend the public school, found wandering in the streets . . . of any city, a truant," may be arrested on complaint of any citizen or peace officer,

¹ Extreme cases were found, such as those of Bernard S., who worked from five in the evening until twelve at night; William M. and Sam S., who worked before school from six to eight o'clock, and from five until half-past eleven at night; Eaner J., who was at work from four to eight in the morning, and from four to eight after school; Morton P., who sold from noon, on and off, until one o'clock the next morning; George K., who sometimes worked from noon until five o'clock the next morning.

Some Protectory boys who worked unusually long hours were: John C., who began in the morning at nine o'clock and sold until eleven, and again from three until nine at night; John P., a little Italian of ten years, who divided his day between two street trades, peddling from seven o'clock in the morning until noon, and selling papers from six o'clock in the evening until after midnight; Frank C., who worked with his father, a bootblack, in the mornings, and sold papers in the afternoons from three until eight; and Michael M., who began his day's work usually at three in the morning, sold papers for five hours before going to school, and often spent an hour or two selling in the evening also.

² This act forbids boys under fourteen and girls under sixteen years to sell on the street between nine in the evening and six in the morning.

³ Penal Code, secs. 291, 292.

and if thereafter not restrained by his parent or guardian must be committed to a reformatory institution.¹

It is worthy of note that only an insignificant number of the reformatory boys whose records showed them to have been vagrants and truants were arrested upon these specific charges. The causes for commitment were many: ungovernableness, disorderly conduct, assault, malicious mischief, petit and grand larceny. The provision against vagrancy has been laxly enforced, and the truants have been suffered to drift into more serious misdemeanors.

Besides the provision quoted above, the Compulsory Education Law contains regulations against truancy. Attendance officers are provided who may arrest any child found truant and return it to school, or who may, in the case of "incurable or habitual truants," have them committed to a truant school. Children so committed do not come within the scope of this paper, except a very few who were afterward re-arrested upon other charges.

The difficulty of enforcing truancy regulations against newsboys is self-evident. With the irregularity bred of his habits, school attendance assumes an entirely casual and haphazard character. Of 76 children at the Juvenile Asylum between four and twelve years, 28 did not go to school at all, as they sold papers at all hours; 48 claim to have sold papers out of school hours, and to have gone to school at least "usually" or, more vaguely, "sometimes." Of the Protective boys, about one-half went to school in the same way, the other half were prevented from going by their hours of labor. The minimum period of education which the law intends to secure is thus invaded by premature work, and school is wholly or in part replaced by an atmosphere alien to normal growth.

The length of time spent at the news trade can be only approximately determined from the records of the reformatories. The truants sell papers only for the few weeks or months during which they shift for themselves. Besides Abraham S., mentioned above, who worked for eight years, there are fourteen boys at the Juvenile Asylum who had spent from two to five years at the trade. A great many more had sold papers for less than one year. There

¹ Code of Criminal Procedure, secs. 887, 888.

is no prospective rise of wages or preferment which acts as an inducement to continue long as a newsboy. Often the merest whim induces a lad to change his trade at a moment's notice. Irregularity has become his habit. Answers given to the question whether they had worked as newsboys, bootblacks, peddlers, messengers, in shops or in factories, showed that of 125 boys at the Juvenile Asylum:

44	had worked as newsboys only								
39	"	"	"	"	"	and in one	other trade		
31	"	"	"	"	"	two	"	trades	
10	"	"	"	"	"	three	"	"	
1	"	"	"	newsboy	"	four	"	"	

At the Protectory, of 56 boys ranging up to ten years:

18	had worked as newsboys only								
24	"	"	"	"	"	and in one	other trade		
12	"	"	"	"	"	two	"	trades	
2	"	"	"	"	"	"	"	"	

The earnings, especially those of the smaller children, are not sufficient to afford perceptible relief to real poverty. John W. of the Protectory claims to have made three dollars in one day selling extras when the Brooklyn bridge was thought to be in danger. People were "too quick" to look at their change, he explained, and gave him whatever "came handy." Another little fellow said: "You can make so much more when there's a 'guilty' out." But large amounts are most exceptional. Some boys speak of earning one dollar and a half a day; the majority make no more than between fifty cents and a dollar, and many do not succeed in getting even fifty cents a day. None of the boys speak with certainty of how much they earned on the average; so many circumstances influence their returns. The newsboy's inveterate addiction to craps-playing varies his earning still further. The visitors to the homes of boys in the Juvenile Asylum reported that mothers of boys in the street trades often spoke of their nervous restlessness, saying that even in their sleep they continued the snap of the fingers which is reputed to bring good luck at throwing dice.

It may be contended that other causes besides the selling of newspapers have brought these ex-newsboys to a place of restraint. Most of them started in life handicapped by poverty, weakness or vicious environment; and no legislation can counter-balance these evil influences. But such an argument ignores the essential fact that street life increases the odds against the poor boy by its additional temptations. If he is already handicapped in the race, all the greater need exists to hedge him from conditions which aid in the development of evil predispositions. In the authoritative words of the English report: "In most cases it would be better that there should be no street trading at all, rather than street trading under such conditions."

It was precisely to change such conditions that the law of 1903 regarding newsboys was enacted in New York State. No prohibition of the trade was attempted; specific restrictions only were introduced. Under this law a boy must be ten years old before he is allowed to sell papers; he must go to school regularly, selling only out of school hours; and he must not sell after ten o'clock at night until he is fourteen years old. To ensure the observance of these regulations he must carry a license and wear a badge issued to him by the school authorities at the written application of one of his parents. The power of licensing will, it is hoped, give the school a rightful preponderance in the newsboy's life. The school requires his first attention, and it allows him, as it were in reward for good behavior, the privilege of a reasonable amount of work on the street.

The license system is as yet untried in this country, except in the city of Boston. It was inaugurated there in 1898, but owing to interruptions and changes in the method of enforcement, its effects are still to be proved.

No adequate method of enforcing the license law has yet been put into practice. Undoubtedly the power of arrest for infringement of the law, like the power of licensing, should be lodged in the school. An added influence and authority would thus be given to the attendance officers, and the close relation between school and licensed work would be brought home to the newsboy, to act as a salutary stimulus to school attendance. This policy of concentrating authority in the school has not been followed. Once

having granted the boy his badge, the school has no further control over him. If he violates the law, the regular police authorities must arrest him. In Boston, a child under twelve years may not be taken directly to a police station; his name and address are secured and his parents are notified that he must appear in court when summoned. In New York the offending newsboy must be arrested and brought before the court, to be dealt with like other misdemeanants. Instead of regarding him merely as a disobedient schoolboy, the New York law introduces him at once on his first offense to the atmosphere of the criminal court — a procedure which may suggest to him that he is definitely enrolled in the criminal class or blunt his awe of criminal justice.¹

This criticism of the method of enforcement, however, does not touch the essential value of the license system. Its results in England are unmistakable. The success of single cities in regulating the news trade under this system led to a recommendation, in the parliamentary report of 1901, that it be adopted throughout England. In 1903 Parliament authorized local acts for establishing the system wherever desired. In England it has thus passed beyond the stage of experiment. It should answer our needs as well, for it works a twofold benefit: securing to children, formerly exploited, school attendance and immunity from work after ten o'clock at night, and to the parents of truants a reinforcement of their authority. When a boy between ten and fourteen years of age is obliged by law to secure his parents' approval and assistance to enter on the trade which he has hitherto regarded as a convenient opening into independent life, there is some check upon truancy. More would be gained if the age limit were raised. When fourteen years is the minimum age for children working in shops and factories, so low a limit as ten years for the more exposed news trade is plainly unreasonable. It represents merely a compromise between opponents and advocates of restriction. Again, the lack of any limitation concerning

¹ After seven months' trial of the newsboy law in New York, the reluctance of the police to arrest offending newsboys and the impossibility of forcing them to do so have led the police commissioner to consider the feasibility of empowering the attendance officers to enforce the law. In Boston the same difficulty has been encountered, and an attempt has been made to solve it by the assignment of a special police officer for the purpose.

the hour of beginning work is a defect in the law, which detracts somewhat from its value.

Before the newsboy law was passed, opponents argued that the license system would involve too much detailed work and too great expense for the city. A glance at the present cost to the city of the ex-newsboys in confinement offers a standard of comparison. At the small *per capita* payment of \$110 for delinquent children, the 235 newsboys in the two reformatories investigated cost the city over \$25,000 in a single year; and these are but two of the seventeen institutions containing city charges. Obviously it is a poor economy which grudges the expenditure of a comparatively small sum to save a much larger expense; and it is not unreasonable to expect that a proper supervision of the news trade will result in a decreased number of arrests for street misdemeanors. The matter of expense, however, is a secondary consideration: what should first be considered is the cost of child labor on the street to future citizenship — a cost which cannot be reckoned in dollars and cents.

There remain to be considered the ex-messengers and ex-peddlers at the two reformatories: boys who devoted themselves entirely to those trades before commitment and those who engaged in them after having first been newsboys. It is not on account of the large numbers who worked at these occupations that the testimony of those now in confinement is valuable, for many of them have been counted as newsboys. The interest lies in the light thrown by individual experiences upon peddling and the messenger service.

The messengers. — As regards the practically unprotected messenger service, the investigator of the Child Labor Committee of New York, after minute inquiry, reported the following evils: employment of children under fourteen years of age; excessive and irregular hours, and consequent interruption to school attendance; encouragement to dishonesty in various ways; and introduction to immoral influences and disreputable houses. The truth of these charges is corroborated by the records of the ex-messengers at the two reformatories. There are 23 at the Juvenile Asylum, of whom 13 were newsboys also at some time in their careers. At the Protectory, there are 19 ex-messengers, of

whom five were also newsboys. These lads, though only a handful out of the thousands yearly in the companies' employ, bear witness clearly enough to the dangers of the service.

The companies state that fourteen years is the minimum age of the messengers; but at the Juvenile Asylum there are nine boys who entered the service at the age of thirteen, three who began at the age of twelve, and two who began respectively at the ages of eleven and ten. At the Protectory, ten out of the 19 ex-messengers entered the service at thirteen years, and three at twelve years. All three had obtained employment simply by calling themselves fourteen. Not one of all these children was able to go to day-school while serving as a messenger, and the night duty to which the majority were at times assigned excluded them also from night-school. Their hours of work covered all times of the day and night, varying with the demands for over-time work and with the needs of the season. A twelve-hour day was not at all unusual, and even these hours were extended. Charles S. of the Protectory, for instance, was on duty from seven to seven regularly, and was almost always kept until nine o'clock at night. Christmas, a season of increased burdens for the messengers, often means hours outrageously extended.¹ The custom of alternating weeks of day and night duty is particularly demoralizing for boys of immature years.² Such hours of work leave them with ingrained habits of irregularity. To vary hours of sleep so radically is difficult enough under the best of circumstances; in the homes from which these boys come it seems to be well nigh impossible. But ways to spend free waking time are not lacking, so that a messenger, after napping a few hours, need not be at a loss for means of mischief.

¹ On the day before Christmas — to cite but two of many examples — John W. of the Protectory worked at a stretch from six in the morning until half-past three the next morning; John D. from eight in the morning until twelve at night.

² Of the Protectory boys, Arnold K. worked one week from six in the morning to eight in the evening; the next from eight in the evening to six in the morning; James B. one week from eight in the morning to eight in the evening, the next from one in the afternoon to eleven in the evening; William O'C.'s hours were in alternate weeks, seven in the morning to five in the afternoon and two in the afternoon to midnight; Luke C.'s, eight in the morning to six in the afternoon and three in the afternoon to midnight.

In this connection, it is of interest to note that the parents of the ex-messengers in the Juvenile Asylum charge these boys almost without exception with refusing to work at any regular occupation. Many boys who are unwilling to work steadily are attracted by the irregular hours of the messenger service, and by the opportunities it offers to loiter on the street and to indulge in petty street crimes. Moreover, the great demand for boys in the service apparently makes occasional truancy, when cloaked by some well-turned excuse, a less serious charge than in other occupations.

As in the case of newsboys, so too among the messengers, few were driven to premature labor by extreme poverty of parents. Of the fourteen Juvenile Asylum boys who began between ten and thirteen years, only one came of a destitute family which had imperative need of his assistance. The others had fairly good homes.¹ As far as can be judged, the same statement holds good in the case of the Protectors boys: the percentage of desperately poor families or of widowed mothers is inconsiderable.

Again, as among the newsboys, the causes of commitment were chiefly ungovernableness and petty larceny. The first is comprehensible enough in view of the messengers' way of life, and larceny is not less encouraged by his environment. Over-charging and pocketing the over-charge is a custom regularly observed, almost unmentioned because so regular an incident of the trade. Cheating and stealing in other ways follow naturally.² A boy need not be long in the service to learn its evil lessons; a few months initiate him. Six of the 24 ex-messengers at the Juvenile Asylum served for one year or more, the others from one

¹ Morris F. was a messenger before he was twelve years old. His father earned \$16 a week and had a good home. Morris was a truant, preferring the messenger service to school. When Jacob S. was a messenger at thirteen years, his father, a carpenter, was earning \$12 a week. But Jacob joined bad companions and refused to go to school any longer. Jacob St. was a messenger at twelve years. His father and mother owned a soda stand; a brother and sister were working; and the family was able to keep up a good home of four rooms, paying \$16 rent.

² At the Protectors there is, for example, Joe A., who was a messenger on day and night service, and who acquired the habit of staying away from home for nights in succession. Over-charging was for him a matter of course, and he soon began to steal from a grocery store. His father paid for his thefts repeatedly, but finally in despair had him committed to the institution.

month to one year. Four of the 19 ex-messengers at the Protectory served for a year or two years before commitment; the remainder less than one year.

The most serious charge of all, that of subjecting young boys to immoral influences, is illustrated by the case of Joseph W. at the Juvenile Asylum. His mother in the deepest distress had him committed to save him from the consequences of his service as a messenger. He had been sent for by a woman in Monroe Street, had stolen for her, and in company with other boys was spending the nights in her rooms. The reformatory offered itself to his parents as the only means of restraint. As against this one boy, whose irregularities were discovered possibly in time to save him, who can say how many of the thousands subject to such dangers have fallen as he did, and fallen unobserved with no attempt at rescue? In the Bowery and Tenderloin districts where most of the Juvenile Asylum and Protectory boys were employed, calls for messengers in night hours meant, almost without exception, an introduction to vice. An inadequate attempt to minimize this danger is found in a section of the Penal Code forbidding messengers to be sent to any disorderly house, unlicensed saloon, *etc.*, "except to deliver telegrams at the door of such house" — an exception which destroys the intent of the act, being obviously impossible of enforcement.¹

The law of 1903 marks a decided advance in the protection of messenger boys. They have been covered by the same laws which protect children working in mercantile establishments. Messengers must be over fourteen years of age; if between fourteen and sixteen years, their hours of labor are limited to nine per day; and they may not be employed between ten in the evening and seven in the morning. Before being employed, messengers must obtain from the Board of Health working papers, which are issued to them only if they have reached fourteen years, are not physically defective, and have completed a required amount of school attendance. These restrictions, if enforced, should eliminate many of the undesirable features of the service. Its insidious dangers for young boys, however, will not be effectively combated until the age limit is still further raised. Men over

¹ Penal Code, sec. 292 a.

twenty-one years should, in time, be the only night employees in this business.

The peddlers. — At the two reformatories the great majority of those calling themselves peddlers did not sell goods independently, but worked as helpers under some grown peddler — usually some vegetable or fruit vender. There are in all 29 boys at the Juvenile Asylum who worked as peddlers, ten of them having been newsboys also at some period. At the Protectory there are 42 ex-peddlers, of whom 27 were newsboys also.

Like other street workers, these boys began at very early ages: 23 of the Juvenile Asylum boys started to work between ten and twelve years; six boys at thirteen or fourteen years. At the Protectory, 31 boys began between ten and twelve years; 11 boys at thirteen or fourteen years. Their duties were to meet the peddler under whom they worked in the early morning at some market, to help him fill his wagon, and then to travel slowly through the streets until the goods were sold. Their hours of work usually lasted from five or six o'clock in the morning until some time in the afternoon. There is thus no night-work in this trade; but, like other street occupations, it encourages an irregular life and introduces a boy to evil companions.

School attendance is of necessity almost entirely dispensed with. Of the 11 older Protectory boys (thirteen and fourteen years old) three went to school; of the 31 younger ones (between ten and twelve years) seven went to school, making a total of ten who attended school out of 42 peddlers. At the Juvenile Asylum, eight of the 29 boys went to school, and peddled out of school hours.

These boys did not keep at the trade for long periods, because they found the pay small and the work heavy. Even a sturdy lad of ten or twelve soon tires of carrying heavy loads up the long flights of tenement stairs for hours in succession. Three of the 29 ex-peddlers at the Juvenile Asylum and six of the 42 at the Protectory worked at this business for one or two years; the rest less than one year. Their earnings were for the most part under fifty cents a day; only nine of the Protectory boys and a few at the Juvenile Asylum made as much as seventy-five cents a day.

Ending their work early in the afternoon, as these child peddlers did, they often finished the day with other street occupations.

John W. of the Protectory is an extreme illustration. For several years he was a newsboy, selling papers after school until late at night. When he was twelve years old he became a peddler in addition. Thereafter his various occupations engaged him for sometimes nineteen hours out of the twenty-four. At five o'clock in the morning he met the peddler who employed him at market, his mother providing him with a small alarm clock to waken him from his heavy sleep. Before school he worked on the street for three hours selling vegetables. School followed, and at three o'clock he was out to sell papers for the afternoon. At night he sold the late editions, occasionally staying out until midnight. "I wasn't much on sleeping," he explained. One of the greatest hardships he endured on first coming to the Protectory was the necessity of spending in bed the conventional hours for sleep, seldom actually getting to sleep before morning.

Every one of these child peddlers worked in technical defiance of the section of the Penal Code which specifically forbids peddling by children under sixteen years of age. So sweeping a prohibition as this, with so high an age limit — higher than that required in the news trade, in factories and in mercantile establishments — is plainly unenforceable at present. The law is, in fact, enforced only when such peddling introduces a child to visibly immoral resorts or surroundings.

The line at present drawn between peddlers and newsboys seems wholly arbitrary. No valid reason appears why a child who peddles from a pushcart, or helps an adult peddler in the street, should not be subject to the same law which protects the newsboy. This is but one of the many anomalies in the existing legislation for the protection of children in New York. The measures passed in 1903 are far from being radical reforms, and should be regarded merely as initial attempts at improvement. Each one of the three street trades still waits for adequate protection. The attempt to license the child peddlers has failed entirely. The confusion of authorities for issuing newsboy licenses and for enforcing their use has been mentioned. The control of the messenger service by the Board of Health is entirely experimental and remains to be proved efficient in practice.

The most glaring defect of the juvenile delinquency laws of

New York, as of every other state except Colorado, is the failure to impose penalties upon the persons accessory to the child's transgressions — upon his parents, guardians, employers, *etc.* It is true that some penalties are provided for adults who participate in acts forbidden to children, *e.g.* a penalty for the junk dealer who buys from a boy under fourteen and for the bar-keeper or tobacconist who sells to a boy under that age; but these penalties are sporadic and illogical. The adult accessory in most cases goes unpunished and undeterred from repetitions of his offense.

Comparing the existing legislation of New York in behalf of children plying street trades with the standard set by the most advanced child-labor laws, the following deficiencies are to be noted:

1. *Age limit.* — The newsboy may go to work at an age lower than that allowed in any other occupation in New York State, *viz.* ten years.

2. *Restriction on account of physical or mental incapacity.* — The newsboy is granted a badge without physical or mental test of fitness, and having obtained it, he is subject to no further observation as to the effects of his trade.

3. *Restriction of hours.* — Messengers above the age of sixteen are not protected from night work, although the dangers of such work for any minor are undeniable. Newsboys are not adequately restricted from night work: in fact it can hardly be said that there is any real restriction in their case when a child of ten years may sell as late as ten at night and begin again at any hour of the early morning.

4. *Restriction as regards trades dangerous to health or morals.* — From this point of view the existing laws are wholly inadequate. It does not seem unreasonable to expect that this ground of restriction will in time be so extended as to exclude all children from the trades of news-vender, messenger and peddler. A more enlightened public opinion will recognize all these trades as dangerous, and therefore as unfit for children.

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THE CESSION OF LOUISIANA TO SPAIN.

PRESENT appreciation of the value of the Louisiana territory, and the estimate put upon it by France and Spain while they were its actual possessors, afford one of the most remarkable contrasts in history. The willingness of Spain to exchange the tract for a petty kingdom in northern Italy, the readiness of Napoleon to surrender it for a quite insignificant sum of money, and the consternation felt in the United States itself over the gigantic landslide from beyond the Mississippi, are too well known to need further comment. These conditions of mind will, at any rate, bear profitable comparison with the spirit of France in 1762 when ceding Louisiana to Spain, and with the feelings of that country in accepting it. Save as a matter of policy,¹ France displayed the utmost indifference as to the fate of its American colony. To both powers Louisiana was not merely destitute of intrinsic value, it entailed a positive deficit.² Its alienation would confer an advantage upon the donor, and entail a corresponding loss to the recipient. Ignorance, neglect and maladministration had brought on so much expense and vexation, that France felt inclined to relinquish the burden, although with a show of magnanimity that faintly concealed her actual sense of relief, while Spain took up the unwieldy mass with a display of gratitude that poorly masked her own chagrin. Compared with these circumstances, the attitude of France and Spain at the opening of the nineteenth century would seem to betoken a real reluctance in parting with the Louisiana territory. That of the United States in receiving it would appear one of positive eagerness.

Various considerations had induced Spain to participate in the

¹ See *infra*, p. 447, *et seq.*

² One of the most noted of recent Spanish historians has ventured the surprising statement that "the exploitation of the gold mines along the Mississippi brought quite a number of colonists to Louisiana." Danvila, *Historia del Reinado de Carlos III*, t. iv, p. 74. Had such mines really existed, the history of the Spaniard in America affords some reason to believe that alacrity, and not reluctance, would have marked the attitude of Spain in reference to accepting Louisiana from France.

war that deprived her of Florida and gave her Louisiana. With growing uneasiness the court of Madrid had watched the diminution of the French power in the North American continent. It feared that when once the colonial balance of France and England had been destroyed, the Spanish American dominions would become the object of English ambition and enterprise. In this opinion Spain was encouraged by the conduct of England herself. The British had adhered tenaciously to their settlements in Honduras, and had carried on a profitable contraband trade with the Spanish colonies elsewhere. A sense of community, also, in the affairs of the two great representatives of the Bourbon dynasty exercised considerable influence on Charles III. The misfortunes of his royal "brother and cousin," Louis XV, and the skill with which the latter and his ministers utilized them in appealing to the sentiment of dynastic affection, weaned the Spanish king from the prudent attitude of neutrality which he had observed during the earlier years of the war. A futile effort to mediate on behalf of France was followed by the formation of the third Family Compact, August 15, 1761.¹

Whatever might have been the spirit of this agreement, it was not specifically an alliance against Great Britain. That was not concluded until February 4, 1762,² about a month after Great Britain, aware of the eventual purpose of the new combination of the Bourbon courts, itself had declared war on Spain. In associating himself with Louis XV on this occasion, Charles III simply became the "cat's-paw" member of the Bourbon alliance, precisely as the French monarch had been enacting that rôle in his connection with Austria. Sentimental sympathy for his Bourbon kinsman, and the fear of British colonial designs blinded Charles III to the actual plight of France, and to the great strength, almost undiminished, of the English adversary. Fatuously he assumed the task of fighting for a cause already lost; the act brought in its train naught but defeat and humiliation.³

¹ Cantillo, *Tratados, convenios y declaraciones de paz y de comercio*, p. 468, *et seq.*

² "Convencion particular de alianza, ofensiva y defensiva entre las coronas de España y Francia contra la Gran Bretaña." *Ibid.*, p. 482 *et seq.*

³ In view of the utter overthrow of the French colonial dominion which had been attained by the time the Family Compact was signed, the language of that

No sooner had Spain embarked in the war than she assumed an active share in the negotiations, already pending, for peace. The only section of the preliminary articles under consideration in July, 1762, which concerned Spain, was that relating to the proposed boundary of Canada on the south and west. By the sixth article as then constituted, France had agreed to cede to Great Britain the left bank of the Mississippi as far as the river Iberville and Lakes Maurepas and Pontchartrain, thus making the Mississippi the boundary between Canada and Louisiana.¹ Forthwith the Marquis of Grimaldi, the Spanish ambassador, protested to the Duke of Choiseul against this virtual cession of a part of Louisiana² under the guise of merely fixing the boundary line of Canada.³ Such a procedure, he argued, would give the English an easy outlet to the Gulf of Mexico. So abhorrent was the idea to the Spanish mind that he even expressed a doubt whether his royal master would ever conclude peace, should the meaning of the article be so construed. He thus intimated that

staid document in reference to compensation for gains and losses seems almost jocose. It says: "Their Catholic and Christian Majesties have agreed that, when the question of peace shall have arisen at the close of the war which they may have carried on in common, the advantages gained by one of the two powers shall compensate for the losses the other may have sustained." *Ibid.*, p. 471, art. xviii. Nor does the humorous aspect disappear in the wording of the actual treaty of alliance between Charles and Louis, wherein it is stated that "from the day of the date of this convention the losses and gains shall be common." *Ibid.*, p. 483, art. iii. The issue of the war certainly enabled Spain to fulfill her treaty obligations, for she shared the losses and — in the minus degree — the gains! Cantillo very properly remarks that for considerations of "mere family affection the blood and interests of an entire people [*i.e.* the Spanish] were compromised in the blunders and caprices of a foreign monarch." *Ibid.*, p. 474.

¹ "La France accorde que la fleuve de Mississippi serve aux deux nations de limites entre la Louisiane et le Canada, de manière que la rive gauche de ce fleuve appartienne à la Grande Bretagne jusqu' à la rivière Iberville et les lacs Maurepas et Pontchartrain." *Projet d'articles préliminaires arrêtés (sic) entre la France et l'Angleterre*, Art. vi. *Archivo General de Simancas. Estado, Legajo, 4551*.

² Elsewhere in the preliminary articles the river and part of Mobile were included in the French cession to Great Britain.

³ It must be remembered of course, that during the French occupation no definite line of territorial division between Canada and Louisiana as provinces had ever been established. Nor did the maps of the period render the task of the diplomats any easier.

France was not at liberty to dispose of Louisiana without the consent of Spain. The suggestion provoked from the Count of Choiseul, the duke's younger brother, who was present at the conference, the sharp rejoinder that it seemed rather odd for Spain to lay down the law to France regarding the latter's own property, especially since under the circumstances the English might decline altogether to entertain the proposition.¹ Choiseul hastened to rebuke this youthful outburst, and answering Grimaldi's objection, said that the sense in which the article was couched ought to be clear enough to relieve the Spaniards of any such apprehension. If that were insufficient, the map that was to accompany the definitive treaty would indicate precisely the extent of the proposed cession. He declared that, since the river Iberville and the two lakes were to remain in the possession of France, the further navigation of the Mississippi by the English toward the Gulf of Mexico would be barred at that point. At least such was the present attitude of France on the subject. In the event of Great Britain's being dissatisfied with the arrangement, certainly nothing would be done, asserted Choiseul, in reference to ascertaining the boundary between Canada and Louisiana, without a previous agreement between the two Bourbon monarchs.²

Up to August, 1762, Grimaldi had received no precise instructions to govern his conduct in the negotiations, but his doubt in reference to the boundary of Canada was well substantiated in the orders that then came from Ricardo Wall, the Spanish chief minister of state. The instructions pointed out how utterly opposed the king of Spain was to any cession whereby the English might get a foothold on the Gulf of Mexico, or even hope to be able to reach that body of water. That Canada ever extended so far to the south as the French had maintained was preposterous. "The English on their part ought not to claim any port of Louisiana itself as a boundary between that province and Canada," wrote Wall, "for to do this one would have to stretch Canada southward to a point it never attained. Nor are the French free

¹ Simancas, Estado, Legajo, 4551. Grimaldi to Choiseul, July 20, 1762, and to Wall, July 22 and August 19, 1762.

² *Ibid.* Choiseul to Grimaldi, July 21, 1762; Grimaldi to Wall, August 20, 1762.

to dispose of possessions the right to which Spain, as the legitimate owner, has never conceded." However, since his Majesty had resolved to

coöperate in every way so as to secure a lasting peace, it would be better to fix boundaries between the several possessions as they actually exist, although up to the present time some of them may not have been recognized by Spain as unquestionably parts of the royal dominions, Louisiana and Georgia, in particular, belonging to this class.

So far as Canada was concerned, he thought that the latitude of the Carolinas might well serve as an approximate line of demarcation between the French and Spanish territories.¹

Armed with these instructions, Grimaldi notified Choiseul that he was ready to produce legal and historical proofs whenever it might be needful to substantiate the Spanish claim to Louisiana,² at least so far as determining the extent to which the province might be alienated to a third power. The matter of capital importance to Spain at the existing stage of the negotiation, he

¹ *Ibid.* Wall to Grimaldi, August 2, 1762.

² "I do not believe it necessary to prove the king's right to Louisiana, but in order that one may provide for all possible contingencies, it might be well to have ready and at hand a memorial with the proofs of that right, such as are indicated in the enclosed sheet — those of which all the European powers have availed themselves to establish the legitimacy of their conquests and possessions in America.

"Memorial which proves:

"1. That the Spaniards discovered and explored all the region or coasts that surround the Gulf of Mexico.

"2. That they have taken possession of the same, and have performed those acts of jurisdiction and dominion whereby the European powers attest their right to the countries of America.

"3. That by reason of the enormous extension, Spain has not populated all the region, in which time [*sic*] the French made their way to the River Mississippi and to Louisiana.

"4. That their settlement is not legitimate nor recognized by Spain, in proof of which during the reigns of Philip V in Spain and of Louis XIV in France, the French were ejected from it by armed force.

"5. That the previous toleration by Spain neither lessens her own right, nor gives weight to the claims of France, *etc.*" *Ibid.* Grimaldi to Wall, August 20, 1762. In his fourth "proof" Grimaldi, it would seem, refers to Juchereau de Saint Denys' exploring trip to the southwest of Louisiana in 1716. See Garrison, *Texas* (American Commonwealths Series), ch. v, and Winsor, *The Mississippi Basin*, 90-98, and the authorities therein cited.

urged, was not only that the English possessions on the continent of North America should be kept at a remote distance from the shores of the Gulf of Mexico, but also that both banks of the Mississippi for a like distance should continue to belong to France. In the opinion of the Spanish ambassador, this would be the best means of preventing English vessels from entering the river from the gulf itself. "So essential is this point regarded in Spain," concluded Grimaldi, "that until his uneasiness vanishes and his mind is made tranquil, the king cannot lend himself to peace according to the measure of his desires."¹ In reply to this repetition of an earlier threat, Choiseul explained that England had already declined to accept any such adjustment of the matter at issue. Thereupon Grimaldi suggested that a neutral and desert zone be erected between the southern boundary of Canada even as far south as the latitude of lower Georgia on the one side, and the remainder of Louisiana and the Spanish territories on the other.² Such was the state of affairs on September 17, when the Duke of Bedford, the British commissioner, became one of the participants in the discussion.

Informed of the approaching arrival of Bedford, Wall now sent Grimaldi a new set of instructions. Their main purpose was to gain, if possible, some real advantage, territorial or commercial, which would serve either as a reimbursement for the expense of the aid afforded to France, or as an offset to the losses Spain might have to undergo from British conquests.³ Rumors of disaster at Havana gave a tinge of foreboding and precaution, fur-

¹ Simancas, Estado, Legajo, 4551. Grimaldi to Choiseul, August 13, 1762.

² *Ibid.* Wall to Grimaldi, September 5, 1762, and Grimaldi to Choiseul, September 15, 1762. "Moyens de régler les articles de l'Espagne avec l'Angleterre."

³ "Considering that the king has performed the service of relieving the king, his cousin, from an oppressive war, if he can obtain some compensation for the injuries he has sustained . . . how can one believe that he would decline it?" *Ibid.* Wall to Grimaldi, September 16, 1762. "Although his Majesty has not proposed any advantages for himself, should England offer any . . . it would be foolish not to accept them, and not be the gainer by the proposals of our enemies, securing some just indemnity for the expense and losses. To this end you have ordered me to treat of these compensations in exchange for the restitutions that we shall have to make." *Ibid.*, Grimaldi to Wall, September 13, 1762. The "restitutions" refer to the territory captured from Portugal in the region of the Rio de la Plata.

thermore, to the instructions. Grimaldi was bidden not to insist upon the Spanish claims so far as to break off the negotiations,¹ and he must yield all if Havana should have fallen.²

In his dealings with Choiseul and Bedford, obedient to the instructions, Grimaldi laid all the stress possible on the benevolent and disinterested motives of his royal master.³ He asserted that on the point of requiring indemnification for any restitutions that Spain might be obliged to make, his orders were absolute. At the same time the Spanish ambassador deftly insinuated that the willingness of his Catholic Majesty to hasten the approach of peace would always exercise a modifying force — "an expression of which I availed myself," he wrote to Wall, "as an excuse in case I were compelled to relinquish all as a prevention of rupture in the negotiations."⁴ Apparently the only thing that made this threadbare diplomatic trick so successful as to disquiet even Choiseul, was the rather unusual circumstance that the Marquis d'Ossun, the French ambassador at Madrid, had not been able to elicit an inkling of Grimaldi's orders.⁵

At the opening conference of the commissioners of the three powers, much to Grimaldi's consternation, the Duke of Bedford submitted a new version of the sixth article of the preliminaries, and with the character of a *sine qua non*. This provided that the line of demarcation between Canada and Louisiana should be traced along the Mississippi and the river Iberville, straight through Lakes Maurepas and Pontchartrain to the Gulf of Mexico. The navigation of the Mississippi, furthermore, from its source to its

¹ "Perhaps if the Duke of Bedford could be persuaded to believe that he might be allowed to return to London with the discomfiture of not having accomplished anything, he might agree to yield in some respect . . . but if with all this the outcome should be naught, then bow the head and sign." *Ibid.*, Wall to Grimaldi, September 29, 1762.

² The possession of the stronghold of Havana, as the key to the Gulf of Mexico, and to her colonial dominions near and around that body of water, was of course indispensable to Spain.

³ Simancas, Estado, Legajo, 4551, Grimaldi to Wall, September 24, 1762.

⁴ *Ibid.*, September 19, 1762.

⁵ "Since the character of the French nation is so light and hasty, if they were to know the actual degree to which the condescension of his Majesty extends, even were their intentions toward us the best in the world, they would give up everything in one moment or another." *Ibid.*

mouth was to be common to the vessels of both Great Britain and France. When Grimaldi endeavored to give force to the claim of Spain to Louisiana, as thereby entitling her to a voice in the disposition of that province, Bedford remarked, rather tartly, that although Spain did seem to claim all of America, there were other nations in the world owning considerable parts of the western continents, and they had strength enough as well to make their possession valid. Louisiana, he continued excitedly, was now held by the French; if it belonged to Spain the intruders should have been expelled long before. Moreover, he professed to be astonished not so much that Spain should try to hinder France from disposing of her own property as she saw fit, but that the forbearance of Louis XV had lasted so long. To this exhibition of bluster, Grimaldi replied quietly, that Spain merely desired to fix reasonable boundaries among the colonial possessions of the three powers concerned. Spain, therefore, was willing to relinquish her claim to Georgia, and to accept any fair adjustment of the Florida divisional line. At this juncture Choiseul observed that without the consent of Spain, France would not conclude peace. "So much the worse for you," retorted Bedford savagely, and the conference came to an abrupt close. Later Choiseul warned Grimaldi that Spain was not in a position to withstand the British demands, and that peace must be procured at almost any cost.¹ Of these circumstances the Spanish envoy was perfectly aware, and as already noted,² his instructions had been such as to make Choiseul's chiding advice quite superfluous.

Perceiving that Bedford was absolutely inflexible³ in his demands regarding the navigation of the Mississippi, Choiseul felt obliged to contrive some means of satisfying Grimaldi without modifying the British ultimatum in any essential degree. He confessed to Ossun that he was puzzled to know why Spain would not accept the preliminary article as Bedford had offered it. He

¹ Simancas, Legajo, 4551, Grimaldi to Wall, September 19, 1762.

² *Supra*, p. 445, note 1.

³ "I doubt whether the universe could succeed in making him change a word; why, I have not been able to induce him even to convert the articles he has proposed into better French!" *Ibid.*, Choiseul to Ossun, September 20, 1762.

found nothing in it to injure the interests or pretensions of Spain. Unable to divine the motives of the Spanish opposition, he hazarded the assumption that Spain objected to the danger of contraband trade in case English vessels were allowed to enter the Mississippi from the Gulf of Mexico. But according to the literal wording of Bedford's demand, only the navigation *down* the river was in question. And if it were the fear of an attack on Florida that actuated the Spaniards, it certainly appeared easier to assail that colony from the direction of Georgia than from that of the Mississippi region. Impelled at length by what he believed to be a necessity, he submitted to Bedford a new article composed in the following form:

France consents to extend the boundaries of Canada as far as the river Mississippi, which is to serve as a barrier and [the navigation of which] will be common to both crowns; but it is agreed that the possession of New Orleans shall remain with France.¹

"In any case," he wrote to Ossun,

whether it be this our latest form of the article, or that of England which is to be accepted by the two parties, the king has decided in his council that he would order the French to evacuate the whole of Louisiana, rather than to miss the opportunity for peace on account of the discussion about a colony with which we are unable to communicate except by sea; which has not, and cannot have, either a port or a roadstead into which a xebec of twelve guns could enter, and which costs France eight hundred thousand livres a year, without yielding a sou in return.²

At the same time he directed Ossun to emphasize to Charles III the immense risk of renewing the war in case the objections of Spain were not withdrawn. In particular, also, he must show how willing France was to give up Louisiana altogether, and even to cause the departure of the French colonists themselves.³

¹ *Ibid.* "Art. vi; tel qu'il est proposé par la France pour moyen de conciliation."

² *Ibid.*, September 20, 1762.

³ "Représentez, Monsieur, la liberté où est le Roy de céder et même de faire évacuer ces possessions." *Ibid.*, Choiseul to Ossun, September 20, 1762; Ossun to Wall, September 27, 1762.

Confirmation of the rumors that Havana had surrendered to the English, together with the exhortations of Ossun, caused Wall to notify Grimaldi that the final decision of the matters in controversy was to be left to France. "His Majesty has resolved to act generously," wrote Wall, "play the part of the good thief, and confide the final determination to the French, placing himself thus in their hands so as to come out as well as possible, or let theirs be the fault."¹

The capitulation of Havana of course enabled Great Britain to render the preliminary articles of peace more severe, and as Grimaldi remarked, to "affect an imperative tone" in most of them.² Not only was the clause in the sixth article about the navigation of the Mississippi freed from the ambiguity in regard to the ascent, as well as the descent, of the river,³ but a series of five stipulations was imposed, on compliance with which Havana would be restored to Spain. One of them called for the cession to England of Porto Rico, or of all the Florida region. France was well aware that Spain would choose the latter alternative, and suddenly decided to relieve her ally of the necessity of surrendering the colony in question. She had already agreed to cede to Great Britain all of Louisiana east of the Mississippi. Now she offered to that power the remainder of the province west of the river, including New Orleans and the island on which the town was situated — in other words, the territory comprised within the limits of the subsequent Louisiana Purchase. The spontaneous offer suited neither England nor Spain. The former rejected it as an inadequate substitute for Florida,⁴ while the latter evinced no sentiment of appreciation beyond the mere empty phrases of diplomatic compliment. The Spaniards knew well enough how slight was the importance that the French attached to Louisiana, and hence placed a like estimate upon the sincerity of the trans-

¹ Simancas, Legajo, 4551, Wall to Grimaldi, September 29, 1762.

² Simancas, Estado, Legajo, 4552. Grimaldi to Wall, October 29, 1762.

³ "It being understood that the navigation of the Mississippi River is to be equally free to the subjects of Great Britain and of France in its whole breadth and extent, from its source to the sea . . . as well as the entrance and departure by its mouth." Cantillo, *Tratados de paz, etc.*, p. 489. Also translated in French, *Historical Collections of Louisiana*, v, p. 240. Cf. *supra*, pp. 446, 447.

⁴ Cf. *infra*, p. 453 *et seq.*

action.¹ Grimaldi, in fact, received orders merely to listen to whatever might be said on the subject, but to take no further interest in it.² On the whole, Spain felt that the greater proximity of Louisiana to Mexico warranted rather the sacrifice of Florida and the retention of Louisiana in French hands.³

The offer of Louisiana to England, however, proved to be the prelude to its cession to Spain. Acting under the advice of Choiseul⁴ and without any diplomatic overtures whatever,⁵ Louis XV resolved to turn over his worthless colony, as politely as possible, to his Spanish "brother and cousin," and his Bourbon kinsman received it as gracefully as his conflicting emotions permitted.⁶ Accordingly, on November 3, 1762, the very day that the preliminary articles of peace were signed on behalf of the powers concerned, the French monarch wrote a personal letter to Charles III, in which he announced his offer of Louisiana.⁷ He then bade Choiseul prepare a secret act of cession for Grimaldi to sign.

The formal proceedings of the two diplomats were simple enough. On the same morning, before the preliminary articles had been

¹ "The French declare that in view of what Spain has done they will themselves assume the indemnity that the enemy asks, but we shall do a very good penance just the same for the ravages already suffered. I know that his Most Christian Majesty has offered Louisiana [to Great Britain], but I am afraid that it will not suffice. . . . We are aware that the French ministers think little of it." Simancas, Estado, Legajo, 4551. Wall to Grimaldi, October 23, 1762.

² *Ibid.*

³ Archivo Histórico-Nacional, Madrid. Estado, Legajo, 3889 A. Wall to Grimaldi, November 13, 1762.

⁴ Cf. Gayarré, *History of Louisiana*, 3d ed. ii, 129.

⁵ Archivo Histórico-Nacional, Madrid. Estado, Legajo, 3889 A. Wall to Grimaldi, November 13, 1762.

⁶ Cf. *infra*, p. 451 *et seq.*

⁷ The portion of it that relates to Louisiana is as follows: "j'ay obligé sous le bon plaisir de V. M^{te} le M^{is} de Grimaldi de signer en faveur de l'Espagne la cession de la Nouvelle Orleans et de la Louisianne, je l'avois offert aux Anglois à la place de la floride; ils m'ont refusé, je leur aurois cédé d'autres possessions pour éviter à l'Espagne la cession de cette colonie, mais j'ay craint que une cession dans le golphe ne tirât trop à conséquence, je sens que la Louisianne ne dédomage que foiblement V. M^{te} des pertes qu'elle a faite dans une guerre aussy courte, entreprisse pour la France; mais en lui cédant cette colonie j'en considère moins la valeur que le bien qu'elle peut faire à l'union de la Nation Espagnole avec la Francoise; union qu'il est si nécessaire d'établir solidement pour l'intérêt de nos sujets ainsy que de notre maison." Simancas, Estado, Legajo, 4552.

signed, Choiseul called Grimaldi to his apartments and informed him privately that the French monarch was extremely anxious to indemnify his Catholic cousin of Spain for the sacrifice of Florida. To this end, declared Choiseul, enthusiastically, his royal master was ready to give up any part of his dominions. As a proof of this willingness Louis XV had determined to cede Louisiana to Spain. He had not made the offer of that province to England more tempting by the inclusion of St. Lucia, asserted Choiseul, because he feared the possible consequences to both the French and Spanish colonies of any increase of English power in the neighborhood of the Antilles.¹ But should his Bourbon relative deem Louisiana insufficient to atone for the loss of Florida, the French monarch would evince his gratitude and good will by the addition of St. Lucia as well.² Choiseul thereupon handed Grimaldi the royal letter and the act of cession of Louisiana. The Spanish ambassador signed the act tentatively, awaiting the pleasure of his royal master.³ In this letter of transmission to Wall, however, he intimated his suspicion as to the real nature of Choiseul's enthusiasm over the prospect of relinquishing Louisiana to Spain, and declared that under the circumstances he thought that the province had better stay in French hands.⁴ The preliminaries of the cession to Spain having thus been concluded, nothing further about them is mentioned in the diplomatic correspondence of the time.⁵ Only the royal signatures, the one of ratification, the other of confirmation, were formally lacking to make the transaction complete.

¹ Cf. the letter of Louis XV, p. 449, note 7.

² Archivo Histórico-Nacional, Madrid. Estado, Legajo, 3889 A. Wall to Grimaldi, November 13, 1762, citing Grimaldi's letter to him of November 3.

³ The text of the act is given in French, Historical Collections of Louisiana, v, 235-36. It is practically a repetition of what is contained in the letter of Louis XV, p. 449, note 7.

⁴ Archivo Histórico-Nacional, Madrid. Estado, Legajo, 3889 A. Wall to Grimaldi, November 13, 1762, citing the latter's letter to him of November 3.

⁵ Writing to Ossun, November 3, 1762, all that Choiseul has to say about the cession is the following: "La lettre du Roy à sa Majesté Catholique et l'acte que je veux de signer avec M. de Grimaldi par rapport à la Louisiane rempliront tout ce que j'aurois à vous dire sur la matière intéressante, dont il s'agit. Les lumières supérieures et le coeur du roy d'Espagne supplieront à tout le reste." Simancas, Estado, Legajo, 4552.

On November 10 the French ambassador at Madrid informed Charles III of the proposed gift of Louisiana, and handed him the letter of his Bourbon kinsman. "The reply of his Majesty, in his first impulse," wrote Wall to Grimaldi,

I assure you was worth any province whatever: "I say, no, no, my cousin is losing altogether too much; I do not want him to lose anything in addition for my sake, and would to Heaven I could do yet more for him."¹

The sentimentality was quite characteristic of Charles III at this time, and Wall had some difficulty in persuading him to accept the offer.² On November 13, however, the Spanish king affixed his signature to the act of cession, and ten days later Louis XV confirmed the deed of gift.³ Not until December 2 did Charles III send a personal acknowledgment of the favor.⁴

The act of France, first in offering Louisiana, almost the last vestige of her colonial dominions, to England, as a means of saving Florida for Spain, and then of ceding it outright to her ally as a partial recompense for what Spain had lost in the common struggle, was a singular mixture of Gallic impulsiveness with Gallic policy. The apparent generosity of the deed is almost pathetic. It would be so in fact had France really valued Lou-

¹ *Ibid.* Wall to Grimaldi, November 13, 1762.

² "This stroke of generosity is one of great policy, and we have had some trouble to make the king accept it, and let himself be persuaded for the same political reason that actuated its offer." Wall to Roda, November 16, 1762, quoted in Danvila, *Historia del Reinado de Carlos III*, t. ii, p. 80. "When once the king had overcome his first generous repugnance that his cousin should lose even a hand's breadth of land, he at length acquiesced and ratified the cession." Archivo Histórico-Nacional, Madrid. Estado, Legajo, 3889 A. Wall to Grimaldi, November 13, 1762.

³ Text in French, *Historical Collections of Louisiana*, v, p. 239.

⁴ Following is the portion that concerns Louisiana: "j'ay été charmé que V. M. ait saisie le moment de faire la paix, et je ne me souviendrai des pertes que par le regret que j'auray toujours, quelles n'ont pas été aussi utiles à la France et à la gloire de V. M., que je me l'étois proposé, en partageant ses dangers et d'avoir été obligé de céder aux pressants instances de V. M. dans l'acceptation de la Louisiane! le M^r D'ossun, son ambassadeur, sçait combien mon Cœur a combattu contre la sagesse des vues politiques qui ont engagé V. M. à m'en faire la cession, et cependant sans l'espoir que j'ay de pouvoir un jour Marquer à la France les mêmes sentimens je m'y serois constamment refusé." Simancas, Estado, Legajo, 4552.

isiana,¹ and were one able to prove the sincerity and disinterestedness of the motives that called it forth. Rather than pathetic, the performance was almost ludicrous in its precipitation of what must have been a foregone conclusion ever since the offer to England was made. Even prior to this last event France had averred her willingness to part with Louisiana.² After the English had rejected the province, to tender it to Spain was assuredly a most natural and logical proceeding. The precipitation, furthermore, lay not merely in shifting the cession from one country to another, but rather in the actual eagerness with which the French shuffled off their ancient possession. Indeed they were actually afraid that Spain might not take Louisiana, or that Charles III might revoke his acceptance of it.³ The ludicrous character of the French share in the cession also appears in the absolute transparency of the economic and political motives involved. Men of less diplomatic discernment than those old masters of statecraft, Wall and Grimaldi, could have fathomed them without great effort.

In view of the facts and deductions already considered, therefore, the actual cession of Louisiana to Spain ought to occasion no more surprise now than it entailed diplomatic negotiation in 1762. To begin with, the French experiment at colonization in Louisiana had been a flat failure. The province was a useless and costly burden.⁴ If France could only shift it from her own

¹ "Une colonie française pleine d'avenir, vierge du fer ennemi, dernier reste de notre empire continental d'Amérique était cédée comme un troupeau." Martin, *Histoire de France*, t. xv, p. 595.

² Cf. *supra*, p. 447 and note 3.

³ Gayarré describes the precautions taken by the French government to ward off this distressing possibility. He says: "When Kerlerec, the former governor, sent to the French government from the Bastille a memorial showing the utility for France to convert Louisiana in concert with Spain into a commercial depot, in order to render the colony profitable, the minister to whom the memorial was referred endorsed it: 'considering that there are in this memorial some details which might point out to the Court of Madrid proximate causes of conflict with the English, and therefore render the cession of Louisiana less acceptable to Spain, it seems proper that this memorial be recast so as to produce a favorable impression upon that government.'" *History of Louisiana*, 3d ed., ii, p. 107.

⁴ At the very time of the cession, d'Abbadie, the governor of Louisiana, had notified the French government on repeated occasions that the colony was in a "state of complete destitution," a veritable "chaos of iniquities," and that to re-

shoulders to those of Spain, it would be a wise stroke of economy. Could that be done under the guise of a magnanimous appreciation of services performed, it would be still wiser as a political move. But if the donation of Louisiana would tend to quiet the querulous grumblings of Spain about contraband trade in the Gulf of Mexico, and to keep that colonial beldame faithful to the Family Compact, in case of a renewal of the contest with England — and all of it in exchange for practically less than nothing — that would be a masterly stroke of statesmanship indeed.

Considered from the political standpoint, the purpose of France in ceding Louisiana to Spain was not, as has been commonly supposed, to grant Spain a compensation for the loss of Florida.¹ That was merely the ostensible object of the cession. Intrinsically, to both France and Spain, Florida was worth nothing. As a bar to the entrance of contraband trade into the Gulf of Mexico, and as a station for *guardacostas* the port of Pensacola had been useful enough. But when the French had ceded to England the river and port of Mobile, the value of Pensacola became sensibly diminished, for the act brought with it precisely what the Spaniards desired most to avoid — the assignment to the English of a foothold upon the Gulf.² Even with the retention of Pensacola Spain could no longer maintain her jealous policy of hermetically sealing the Gulf of Mexico against the commerce of other nations, if indeed, she ever had succeeded in enforcing it absolutely.³ A more cogent reason than the bestowment of an indemnity for the loss of Pensacola was that of suppressing the French contraband trade, both overland and maritime, with the Spanish colonies around the Gulf, which had had New Orleans as its centre. In

store a proper degree of order it would be necessary to employ "measures of an extreme character." Cf. Gayarré, *History of Louisiana*, 3d ed., ii, 108.

¹ The prevalent opinion is stated for example by Martin as follows: "Par une convention secrète signée le même jour que les préliminaires le roi de France promettait la Louisiane au roi d'Espagne pour le dédommager de la perte de la Floride, et de l'impossibilité où l'on était de rendre Minorque à l'Espagne." *Histoire de France*, t. xv, p. 594. The last statement is wholly a conjecture, without documentary foundation. Like most of his Spanish confrères, the French writer interprets the cession very superficially. Cf. however the somewhat vague opinion of Danvila, *infra*, p. 454, note 3. Cf. also p. 456.

² Cf. *supra*, p. 441 *et seq.*

³ Cf. the statement of Ferrer del Rio, *infra*, p. 454, note 3.

this way France would dry up a source of chronic dispute with Spain.¹ But the dominant purpose of France, after all, it would seem was to assuage the wounds and sorrows of war, and to assure the continued subservience of her whilom ally to the French dynastic policy.²

On the part of the Spaniards the cession of Louisiana awakened neither surprise nor enthusiasm nor gratitude.³ Personal modesty and a sense of compassion for a kinsman in distress were commingled in the sentimental utterances of Charles III which apparently betokened a disinclination to accept the province. It is quite probable, however, that the king's Spanish pride recoiled from the tacit enactment of the rôle of a suppliant to French bounty, making him slow to accept the positive advantages, if any, the newly acquired American wilderness might bring. Through an analysis of this calculation of the Spanish monarch and his ministers one may arrive at the motives that caused the acceptance of the cession.⁴

¹ Cf. *infra*, p. 156, note 4.

² A careful interpretation of the circumstances of the cession, and intensive reading of the letter of Louis XV, are quite sufficient to establish the truth of this assertion. For additional evidence of a documentary character, see *infra*, p. 456, note 4. Danvila, it will be observed, states this view of the cession negatively by showing what Spain should have avoided. Cf. *infra*, note 13.

³ At this point it might be well to give the opinions of several of the more prominent Spanish historians, relative to the significance of the cession of Louisiana. "As a compensation for the loss of Florida," remarks Lafuente, "Spain obtained . . . what was left of Louisiana, which in fact was for Charles III a burden and a care rather than an indemnity or a recompense." *Historia de España*, ed. 1862, t. x, p. 324. "The fact that Louis XV by a bit of crafty deceit forced the acquisition of Louisiana upon Charles III," declares Ferrer del Rio, "was far from affording any compensation for such a loss [*i.e.* of Florida]. That new state not only troubled the king with the disagreeable task of governing subjects ill-disposed to his service, but threatened him also with the dangerous contingency of a war with Great Britain." *Historia del Reinado de Carlos III*, ed. 1856, t. i, p. 377. Danvila is the most recent and best informed of the historians who have dealt especially with the reign of Charles III. He says: "The cession of Louisiana on the part of France as a means of rendering our misfortunes less acute remedied the situation and consequences of the past war in no respect. It served merely to demonstrate . . . the necessity of modifying the course of policy, and for the future of relying wholly upon one's own resources when about to undertake those enterprises which every self-respecting nation is obliged to inaugurate when the question arises of defending the integrity of one's country." *Historia del Reinado de Carlos III*, t. ii, p. 84.

⁴ See *infra*, p. 456, note 4.

The disadvantages involved in the acquisition of Louisiana were obvious enough. Neglect and misgovernment by France had brought the province into a deplorable condition. The lack also of any adequate system of taxation for the support of government and the maintenance of the church made Louisiana, in the eyes of Spain, a pauper colony, a sort of public charge that probably could not take care of itself financially or otherwise. It was the first colony Spain had ever held that had not been settled originally by Spaniards. A new system of colonial administration and different social institutions would have to be superimposed upon the French inhabitants, who probably would be disaffected and hard to govern. Its proximity to the English colonial dominion on the other side of the Mississippi, moreover, might engender friction and perhaps bring on war with Great Britain. Nor was anything known about the nature or value of Louisiana itself, beyond the sparse settlements along the Mississippi; and these were quite insignificant. As a substitute for Florida, finally, the odds of intrinsic value appeared about equal.

But these drawbacks lost their importance before the arguments in favor of accepting and retaining Louisiana. To begin with, the great benefits to be derived from an adherence to the Family Compact were not perhaps quite so patent to the Spaniards as to the French, but at all events it was not the part of wisdom to alienate France by a rejection of her gift.¹ Besides, the possession of Louisiana was useful, if for no other reason than that the Mississippi furnished an admirable line of demarcation for the Spanish dominions in North America. Apart from this consideration, however, if Spain did not take the province it might fall eventually into the power of the English.² Developed under the

¹ "A great influence with the king has been the consideration of not losing the effect of so fine a deed, the air of cordiality with which the two courts will appear before the world, serving to bring together the two nations still more." *Archivo Histórico-Nacional*, Madrid. Estado, Legajo, 3889 A. Wall to Grimaldi, November 13, 1762.

² "Lorsque cette malheureuse convention fut rendue publique le cabinet de Versailles tâcha d'apaiser l'opinion, profondément blessée, en insinuant dans ses justifications officieuses que la Louisiane était menacée du même sort que le Canada, et que l'on n'abandonnait que ce que l'on n'eût pu garder longtemps." Martin, *Histoire de France*, t. xv, p. 595.

auspices of that mighty and enterprising people, Louisiana would assuredly become dangerous to the peace and safety of Mexico. Even in the hands of Spain the province was too vast in extent to serve as a very effective barrier against English aggression. Still, on the whole, Louisiana had better be even loosely defended by Spaniards than suffered to become a sturdy and vigorous English colony, with its fortified posts well advanced toward the Mexican frontier.

All things considered, from the commercial and political point of view furthermore, the loss of Florida had been quite a heavy blow to Spain.¹ The acquisition of Pensacola, added to the cession of Mobile from France and the previous possession of Jamaica, gave the English such a hold upon the Gulf of Mexico that the imposition of any adequate check upon their contraband trade with the Mexican region appeared well-nigh hopeless.² But if the English had thus been admitted to the Gulf it was some satisfaction at least to know that with New Orleans under Spanish control, French smuggling would be suppressed.³ Lastly, that Louisiana possessed some natural wealth could not be doubted, and under a wise administration its resources could be developed, alike to the profit of Spain and to that of its new province.⁴

¹ Cf. *supra*, p. 453.

² By the acquisition of Florida "the English realized their desire of old to get a footing on the shores of the Gulf of Mexico, so as to carry on their commerce with New Spain, the only section of country in the western Indies free up to that time from their illicit traffic." Ferrer del Rio, *Historia del Reinado de Carlos III*, ed. 1856, t. i, p. 377. In his correspondence with Tanucci, the Neapolitan minister of Charles III, Wall declared that, in his opinion, the real advantage which England gained by the acquisition of Florida was nothing more than a greater facility for navigating the Gulf of Mexico. Simancas, Estado, Legajo, 5978. Wall to Tanucci, December 14 and 28, 1762.

³ Cf. *infra*, note 4.

⁴ Several of the motives above discussed as actuating both France and Spain are set forth in an official brief (*extracto*), prepared about 1767 for the Council of the Indies. It states that the king of France decided to cede Louisiana, principally because he desired to "maintain the closest possible union and friendship with Spain." Since also, the Spanish commerce with the Indies was so flourishing, he did not wish to have a settlement on the Gulf of Mexico which was likely to carry on an illicit traffic, practically impossible to prevent, and which "contrary to his intentions might lead eventually to unpleasant disputes. To this end he authorized the Duke of Choiseul to draw up an act of cession, pure and simple. Aware of these circumstances, his Catholic Majesty . . . was inclined to accept it for various considerations:

Thus having described the cession of Louisiana in 1762, and explained the motives of France and Spain in accomplishing it, a few words remain to be said about its meaning for the history of the United States. Few diplomatic transactions have exhibited so strange a medley of motives and emotions — at once those of impulsiveness, policy, relief, reluctance and practical calculation, all of them pervaded with a tinge of indifference and carelessness. To the Frenchman and to the Spaniard of 1762 the transfer of a vast and unknown tract in the wilds of North America was, on the whole, a rather trivial performance. Had they realized that the Louisiana territory stretched over 900,000 square

" 1. Because, by adding to his dominions of New Spain the territories which his Most Christian Majesty had possessed between them and the River Mississippi, this river from its mouth to its source would serve as a fixed and definite boundary for his royal possessions in North America.

" 2. Because, by this acquisition the French would be deprived of a point of vantage from which they had carried on very extensive smuggling operations in the Gulf of Mexico, and more especially along the shores of Campeachy and Honduras, not to mention what they were accustomed to do in the interior of the country.

" 3. Because, although granting that this new acquisition might be a heavy burden upon the royal exchequer — in view of the fact that no taxation had been levied there, even to the extent of tithes for the maintenance of the clergy and worship, it being necessary to provide for it by a regular appropriation — one must bear in mind that this appropriation would have a substantial return from the diminution of illicit traffic, and from the advantages that would accrue to the king's vassals by reason of the commerce of that new dominion.

" 4. Because, were his Majesty to decline the cession, the eventual fate . . . of the colony would be doubtful; and if by any chance it might fall into the hands of England, in time of peace it would be steadily developed and fortified in the direction of the frontiers of our dominions, it would become widened out along the Missouri and other rivers, the good will of the Indians would be won over, evil reports would be circulated against us, and in case of an outbreak of war the colony would be close to us and well equipped for attacks by way of the provinces of Texas and New Mexico. It was never believed that this . . . colony would become a bulwark for our America; the supposition has always been that should the English intend to invade it, even if we had a large force of troops there, we could not seriously check their movements along an extended frontier of five hundred leagues." The last sentence of the *extracto* is rather difficult to translate, and requires a paraphrase to make its meaning reasonably clear. The text is as follows: "Pero se consideró que no sería lo mismo entrar de nuevo que tenerla ocupada de antemano, y hallarse ya adelantados y fortificados á nuestras espaldas." "But the consideration prevailed that the invasion of Louisiana, were it a Spanish province, would be something quite different from suffering it to be developed and fortified by the English at our very back." Archivo Histórico-Nacional, Madrid. Estado, Legajo, 3889 A.

miles — an area more than four times that of France or Spain — but little difference, probably, would have been made in the readiness of France to part with it, and in the comparative reluctance of Spain to take it. Perhaps it might not be too much to say that in the bizarre diplomacy of 1762 over the cession of Louisiana to Spain, the fate of the United States yet unborn was decided. Had France assigned the territory to England in that year, or if she had retained it, the history of the period 1789-1815 justifies the belief that the result would have been the same; the region must have become a part of the British colonial dominion. When the United States was in its infancy, all conditions, geographical, political, social and economic, pointed toward the formation of two confederacies, one along the Atlantic seaboard, the other along the Mississippi. For many years, if not for all time, that river must have been at once the western boundary of the United States, and, even had that country retained its unity, a bar to its national development.

However unconscious and unwilling her course of action, Spain has been the most potent external factor in the territorial expansion and aggrandizement of the United States. Most of the great republic's domain was once under the Spanish sway. The cession of Louisiana to Spain in 1762 was the necessary prelude to the purchase of 1803, and the story of the West beyond the Mississippi has been in the highest degree the story of our national prosperity and power.

WILLIAM R. SHEPHERD.

EGYPT AND ENGLAND.¹

THERE is no known method of governing which is not applied to some portion of the British Empire, and no two portions of it bear an identical relation to the home government. I suppose we may now call Egypt the latest important acquisition of the British crown. The method of acquisition and the method of control, however, are alike marked by the most extraordinary indirection, for neither ownership nor rule is complete. As yet Egypt is under the nominal suzerainty of the Porte and pays to the Sultan a large annual tribute in recognition of that fact. But Mehemet Ali, after England had wrested the country from the French in 1803 and restored it to Turkey, got up a petty civil war, had himself elected Pasha, and wrung recognition as a semi-independent ruler from his suzerain. Until 1831 he crushed one form after another of resistance to his power, and by his son Ibrahim reduced Syria to his sway. This was a wonderful man: but that England forbade him he would have thrown off entirely the nominal rule of Turkey. He was ruthless in his dealings, but he reformed administration, laws and education to what, for the time and place, was a wonderful point.

His successors down to 1863 were unimportant and mediocre persons. It was from one of them, Said Pasha, that the concession for the Suez Canal was secured by the French. The great enterprise was undertaken in 1859 and the work was done by what amounted to forced labor, the tale of workmen being secured by laws of a despotic nature. In 1863 Ismail, the grandson of

¹ This article is based on Lord Cromer's report for 1902, a masterly review of twenty years' work, on Lord Milner's *England in Egypt*, on a few volumes and articles now useful only in parts, and on notes made by the writer while sojourning in Egypt for nearly four months during the season of 1903-1904. The recent diplomatic arrangement between France and England does not appear to have gone further in regulating their Egyptian relations than the removal of friction in the management of the finances. This, however, as the context will show, is a matter of vital importance, destined to free the action of Great Britain in almost every important reform.

Mehemet Ali, came to the throne. Educated in Paris, he made a great display of European culture; railways and canals, especially the Suez Canal, were pushed to completion at a dizzy rate, and there seemed no limit to his care for agriculture, which is the one resource of the country. New irrigation ditches of great dimensions were opened, dug by forced labor of course. The Suez Canal was completed in 1869: four million two hundred thousand pounds were spent in the festivities at the opening. In fact money was spent so lavishly on all occasions that the public debt, secured by successive bond issues, became tremendous. At the same time it was found that he and his favorites were accumulating enormous private fortunes.

The public finances were soon in distress, and in order to raise the wind Ismail sold to England in Disraeli's administration (1875) all his Suez shares, 176,602 in number. There being all told 400,000 shares, this purchase, along with what was already held by individuals, gave to British shareholders a controlling interest in the French company. The block was then worth four millions sterling; it is now worth twenty-five millions. What was more important, it was a crushing blow, of course, to the predominance of French influence. Things went from bad to worse with the finances until Ismail's government became shamelessly venal and the peasants were cruelly oppressed. European bondholders were justly uneasy and interest was not forthcoming. In 1878 France urged the coöperation of Great Britain in securing control of Egyptian finances and a joint commission of inquiry was appointed. The debt was ninety millions sterling, the interest about two and a half millions. This Ismail extorted with such cruelty from the peasants that their cries ascended to heaven: under pressure the Khedive (a new title given him by the Sultan in 1867, as an acknowledgment of virtual independence) agreed to rule thereafter by a cabinet. One was formed and, at Ismail's own instigation, mobbed, the two principal ministers, those of finance and public works, being English and French respectively, and the nominal head an astute Armenian, Nubar.

This governmental device was well understood to depend on the European representatives in Cairo, the consuls-general. Nubar

demanding from them a larger army, which he got, and other powers to which they could not assent. After reducing the interest on the debt, he resigned and was succeeded by Taufik, the heir-apparent, as prime minister. In a very short time Ismail dismissed the whole cabinet and appointed a new one consisting entirely of natives: this was done to conciliate the upper classes, wealthy Turks who had grown rich at the expense of the poor, and it was speciously represented as a national movement. It was an effort of course to throw off international control before it became too strong. England and France immediately demanded Ismail's deposition at the Porte, and although the Khedive had sent enormous bribes to Constantinople, the Sultan was nevertheless at the disposal of the powers.

Ismail was succeeded by his son Taufik on May 25, 1879, and five days later left for Smyrna, taking with him an enormous fortune and a numerous harem. He died in Constantinople in 1895. At once, after his departure, the international control was restored in Egypt, and a commission of liquidation set to work reducing taxes and instituting various reforms. The abuses of oriental conditions by European consulates are notorious: at times the right of extritoriality has been so extended as to give consuls perfect control over hundreds of natives who are ostensibly in their employ but are really fugitives from justice or recalcitrant to the customs of their people. Long endurance of that outrage and the fact that Egypt has been for ages a refuge for the scum and outlaws of southern Europe, combined of course with religious fanaticism and national pride, resulted in an exasperation among high-spirited natives that finally ended in Arabi's rebellion against what seemed an effort to render intolerable conditions permanent. He and his agents aimed to increase the native army and get control of Taufik.

In this last they succeeded and were rapidly making headway with their other plans, when on May 25, 1881, the consuls-general of France and England demanded the banishment of Arabi and the resignation of the cabinet in which as minister of war he was the ruling spirit. The Khedive yielded, formally; but under the plea of repressing the disorder which was now becoming general in the great towns he continued Arabi in place and actually dec-

orated him for his services. On June 11 the natives of Alexandria began to riot and killed a hundred and fifty Europeans, the life of the British consul being saved with great difficulty from those who pursued and stoned him. Both France and England had been gathering a fleet in anticipation of trouble. France remained inactive, but on July 11, when the news of Arabi's successes and of his decoration for the sorry work was confirmed, seven British warships bombarded the town. The rabble with oriental versatility employed their opportunity in burning and plundering beneath the hissing shells. Three days later, July 14, the British finally landed marines and restored order. They likewise occupied a number of forts commanding the town. In the sequel a commission of indemnities awarded nearly four and a half millions sterling to those who suffered from the bombardment.

Under such pressure Arabi was dismissed at last and immediately began to organize his many followers for war. On August 15 Wolseley arrived and on the 18th his army. The British fleet seized the Suez Canal and gave the company a hundred thousand pounds as indemnity. On September 13 the English met Arabi at Tel-el-Kebir and overwhelmed his force; two days later they occupied Cairo; and at Christmas Arabi was sent as a prisoner to Ceylon. England had nominally and ostensibly conquered Egypt for its Khedive, who of course had yielded to Arabi under the stress of necessity! That was made as clear as words and deeds could make it. It would have been a simple thing then and there to have declared a protectorate; but politics was just then very tangled in Europe, and out of deference to French feeling no outward sign was given. In fact Gladstone declared that English intervention had no other aim than to restore order. This was certainly said in good faith, and the Liberal government certainly intended to evacuate Egypt in due time.

But restore order! Neither the ignorant, venal Pasha class of Turks who had misgoverned the country, nor the ignorant, rash, inexperienced natives of the Arabi class, nor the existing ministers with their bureaucracy — no one in Egypt could either restore or keep order. Fire kindled almost immediately in the farthest Egyptian province, the Sudan. In 1883 two Egyptian

expeditions under English generals were wiped out by the fanatic leader who called himself by the style of Mahdi (Messiah) and his followers by that of dervishes (devout). Next year Gordon took command, tried his fortune on a reasonable plan, but was not properly supported, and Wolseley, sent to reinforce him, came too late. In 1885 the Sudan was lost and the Mahdi reigned at Khartum. What was to be done to keep Egypt at all for its Khedive and regenerate the land so that resources even for self-preservation might be created? Should the English destroy existing institutions root and branch, or put life and decency into the old? In a forcible way England announced that Egypt would be ruled as always, only now by the "advice" of Great Britain as conveyed through her consul-general and minister plenipotentiary in Cairo.

After a few trials the right man for that important position was found in Evelyn Baring, now Lord Cromer. Lord Dufferin came, saw, diagnosed, and laid down the lines of action. These lines have in the main been followed, and in times of uneasiness the word of power has been spoken from the respectable but insignificant mansion which is the British diplomatic agency and consulate. Reform progressed so rapidly and financial prosperity came so quickly that in 1889, the Mahdi being dead and his successor worthless, preparations began for the reconquest of the Sudan. After two years of preliminary movements, Kitchener wiped out the Dervish force at Omdurman with an army which was partly Egyptian but also partly English. Victory therefore was not followed by a complete restoration of the vast and indefinite territory of the Sudan to Egypt as an Egyptian province: a separate government known as the *condominium* of England and Egypt, purely military, under the Sirdar Kitchener, commander-in-chief of the Egyptian army, was established at Khartum. The British and Egyptian flags fly side by side throughout the Sudan, whose limits, now that France has been shouldered out of Fashoda, are fairly definite and comprise a territory as large as all central Europe.

So much for the historical outline; what was the organic force? A certain number of Englishmen were appointed to the higher offices in every branch of the administration, and they were ex-

pected by the exercise of common sense and with the moral backing of British prestige, gradually to revolutionize the spirit of every department. This they began at once to do; their first concern being the irrigation system, which is initial and central to Egyptian well-being. Hitherto the great proprietors had taken water from the canals, when, where and how they pleased, by the simple process of bribing the officials and bullying the peasant owners at will. This was instantly stopped, and what the rich lost the peasants gained. The former class turned sullen and bitter, but their obstruction was futile. Immediately there began a vast development of paid public labor, the curse of the *corvée* or forced labor being abolished at a cost of nearly half a million sterling. Every energy was concentrated for the wider and cheaper distribution of Nile water to the cultivators by repairing the old works and building new ones.

But even ample water at a fair price could not pay the peasants' debts. For ages Greeks, Syrians and Copts, all avowed Christians, had been the usurers of Egypt, and like the Jews in Europe, they held the people in galling bonds. They bribed and combined with the tax gatherers to strike abject terror into every heart by irregular, uncertain and unjust methods of collecting taxes and interest, both of which were for the most part paid in kind. The rate of interest ran as high as sixty per cent, and the security was the growing crops! France and England already had control of the finance, but as they could not agree about methods of reform, France withdrew. The land tax was the foundation tax, and only by thorough discipline of the collectors could it be justly laid and raised. This England undertook alone and accomplished, but in the process her extra-legal financial adviser, really controller, revolutionized both the personnel and the methods of what is the largest portion of the entire administrative system.

The first step was to inaugurate a system of penurious economy in every department except that of public works, which directs the irrigation system. There was terribly bitter feeling far and near, from the Khedive's ministers down; for England not merely gave "advice" to the ministers, it peered into every department of administration to the limits of the land by means of its in-

spectors. The Egyptian bureaucracy felt its prestige annihilated; and but for unprecedented caution and manners of un-British inoffensiveness this would have been the case. With the ultra-caution of the officials the situation, however, was saved. A few, a very few, Englishmen ran to and fro examining, regulating, correcting; they were almost ubiquitous, yet the face of the native government "was not blackened" as the people say in the metaphor of their native Arabic. In fact, as it was definitely settled that Great Britain would not assume the government, many important concessions were made to native prejudice and feeling. This was a very hard and very risky course, for the failures of the ministry in any direction would naturally be attributed by the jealous public opinion of Europe to English mismanagement. Nubar the prime minister had already succeeded in diminishing the abuses of the consular courts by organizing mixed tribunals, composed of native and European judges, and competent in all disputes between natives and strangers. He was now permitted to try his hand at the reform of the pure native courts, and he signally failed. In the menace of immediate bankruptcy the English took funds from the treasury for purposes not permitted under the international control of the finances and there was a terrible outcry. And the Egyptian army with British officers in the Egyptian service had lost the Sudan! France and the French newspaper organs rent the heavens with remonstrance and abuse. A French paper of Cairo was so scurrilous and so traitorous that it was suppressed, and by means which the French consul showed to be illegal. Altogether the middle eighties in Egypt went far to destroy British prestige in colonial administration. As under the conditions prevailing the interest on the debt could no longer be paid, radical measures seemed necessary to all Europe.

Patience was essential, or at least a substitute for patience, and the substitute was at hand. England grew uneasy under the Irish question and left her agents to themselves, creditors were timidly quiet and clamor ceased when the world realized that to hound the English in occupation was to ruin themselves. The doctors at the bedside might be ill-advised but there were no others to take their place, not only no better ones, but absolutely none. Throughout 1884 and 1885 the powers discussed;

and when the plain facts were made known a reasonable arrangement of the finances, since called the London Convention, was drawn up and signed in March, 1885. The astute Nubar saw that England had come to stay; an able man and a true patriot, he had fretted under her control; and after making one last futile effort to shake it off by an appeal in person to the continental powers and to England herself he resigned. The second greatest obstacle to British success was thus removed.

As a proof of the esteem in which the English held him one may see in All Saints Church, Cairo, a tablet to his memory as that of a just man! In fact his own people had long since ceased to love him, for they could not realize how helpless he had been and blamed him for every English advance. His last and final defeat was in the reorganization of the police system, when he made unwise nominations and was discredited by their rejection. This he gave as the ostensible reason for his resignation. Lord Cromer is a quiet and a stern man; it was seen how unwise it had been to raise an issue with him. For, all this time there was a British army of occupation, and the Sudan affairs made it easy to post its detachments at every strategic point. An awful outbreak of cholera brought British inspectors into every hamlet almost simultaneously, and the simple code of health laws was rigidly enforced in spite of numberless outbreaks of fanatical resistance. The mailed hand was at every man's door; and, though it was there only in beneficence, it was felt to be a mighty fist that could easily strike in anger.

Then began almost magically the complete turn in British luck with Egypt. Her agents have been able from that hour to play the strangest game of government that ever was played and to play it with signal success. Their policy of Egypt for the Egyptians, of the restoration of order and the establishment of prosperity by means of Egyptians and as far as Egyptians can carry it, has never faltered for one moment. The complexities of its realization are infinite, the hollow and side-splitting farce of Turkish suzerainty, the comedy of khedivial rule, the melodrama of continued international control — all these are played with a zest worthy of reality and an artistic skill that produces the effect of the highest naturalness. It seems to pay, this puz-

zling complexity, difficult and illogical and opportunist as it is. For already Egypt is a solvent, peaceful, regenerate, happy land. Even Moslemism has ceased from its fanatic agitations, for the time, and the highest authorities of Islam give their edicts in consonance with British policy.

Here is a sample or two of the way it works. The English army of occupation has been reduced to a few regiments; in Egypt proper, three thousand men all told or thereabouts. Yet the military power of Great Britain in Egypt is tremendously strengthened. Why? Because in 1884 the Egyptian peasants, beggared and abused, so hated military service that on the slightest provocation, in presence of the enemy, they threw down their arms and ran; with Moslem fatalism they even sought death as preferable to the long torture of their lives. Now after years of kindly treatment they prove faithful and courageous soldiers, good on the march, trustworthy in battle. As the Sirdar or chief commander is a British general, the Egyptian army not only holds Egypt for England, but it could be immediately employed in any sudden crisis to put down rebellion in the Sudan, where at Khartum there is a mere handful of English soldiers. As things are, the British troops in Egypt have no status whatever, they are merely uninvited guests. Morally their presence produces an enormous effect, of course, in upholding Cromer's authority, but really it is already the sanction of the Egyptian army which is behind British administration and British control. By way of making the situation complete, the coal-black Soudanese have been enlisted and formed into battalions. While the Egyptians have a passion for drill and fight quite well enough, the Soudanese are impatient of drill but fight as few other soldiers in the world.

The total force is under fifteen thousand. They are so distributed as to protect the only frontier line which requires defence — that on the extreme south with the eastward outpost of Suakin on the Red Sea. Three or four thousand are scattered here and there down below, partly for display, partly to insure internal order in case of extremity. Their minor officers are in the main native Egyptians of Arab, Coptic or Turkish extraction. In them lies the weak point of the military structure. They are impatient of education and discipline, they lack character and

initiative. Their own claim is that they are kept down and deprived of opportunity. The British rulers of Egypt are extremely anxious for high quality in the men of their own blood employed in the country, and since they know that an increase in the number of British officials, civil and military, would mean a lower standard of capacity, they are growing uneasy lest the company officers should fail and have to be replaced by commonplace or low-grade Englishmen. They appear therefore to be on the eve of an experiment, that of taking the native officers at their word and giving them their chance, reducing the number of higher British officers as the others rise to replace them.

The greatest value of a journey through Egypt is that the traveller is forced to perceive how closely the state stands related to its folk. All life is so simple and so primitive that cause and effect are directly, momentarily visible. In this simplicity it was and can now be seen how Ismail, wickedly prodigal, created a burden of debt the interest on which must be paid by direct taxes. These taxes fall chiefly on the land, and they increase in exact proportion as taxable property diminishes from want of water or other disaster. On the other hand, they decrease as there is plenty of water to make plenty of taxable land, or as other minor almost negligible forms of prosperity create other although less important taxable property. With the observant eye is literally seen, and not deduced by tedious economic logic from masses of statistics, exactly how public utilities create private property: in this case how irrigation works, which can only be constructed at public expense, bring immediate return to the government by what is paid for water, by what is created for taxation, by the increased well-being of the people and their consequent contentment. To the individual the efficiency of the government is everything: with a certain supply of water, he can raise one crop, with more another, with a perennial supply still a third or even a fourth. This of course reacts directly on every department of life, on wages, on imports, on barter, on exchange, on security, on the welfare of man and of men. Here is political, social, financial economy in a system easily comprehended by any clear mind. With a thrifty, almost parsimonious administration

taxes are diminished in their incidence upon each unit, exactly as there are more units on which to lay them.

When Ismail was deposed, by a law of liquidation the debt was consolidated at its face value, almost a hundred million pounds (nearly a third of his borrowings had been retained by the lenders as commission), and the interest was scaled down on the various divisions of bonds to five and four per cent according to terms and security, until the interest account called for about three and a half millions a year. By the tribute to the Porte and by what was guaranteed to England as return on her Suez Canal shares this sum was raised to about four and a half millions per annum, almost half of the total revenue of the country at the time. From the other half, another portion was deducted as a sinking fund. This amounted only to a million, when at a bound Arabi's rebellion and the revolt of the Sudan, following each other in a brief space, added ten million to the debt. Yet the law was still in force when peace came and the revenues rose by leaps and bounds; in the single year 1883, eight hundred thousand went to the sinking fund. Unfortunately the expense of administration rose too, and double that sum had to be found to meet the deficit in the budget for administration. This absurdity was carefully studied by experts appointed by the various powers who met in convention at London in 1884, and on the basis of their reports a binding agreement was reached in 1885. Six commissioners from as many powers have absolute control of the debt; these nations guaranteed a new loan of nine millions which was raised at about three per cent, entailing an annual charge of three hundred and fifteen thousand pounds. The new loan wiped out all outstanding debts and furnished a million for irrigation. This was so wisely spent that it returned in a single year new receipts nearly equal to the capital.

Under the London Convention things work somewhat in this way. The commissioners of the debt are known as the *Caisse de la Dette* — *Caisse* for short. The *Caisse* takes, as under the law of liquidation, a certain share of the revenue, about four-ninths; the rest goes for administration to the government. The latter makes a budget which is authorized by all concerned. The *Caisse* first pays all the bond coupons and from the surplus pays

any deficit in the authorized budget. Should the *Caisse* still have a surplus, it shares it equally with the government. The bulk of the latter's expenditure was permanently fixed by the London Convention, the variation from year to year occurs in items that cannot be prearranged. Should the *Caisse* have a surplus — as it surely does — say of half a million, and the government an authorized deficit of three hundred thousand and an unauthorized deficit of fifty besides, the *Caisse* hands over first the three hundred, then halves the remaining two hundred, and then, having still a hundred, it halves this again, paying fifty to the government for its unauthorized deficit and applying the other fifty thousand to the reduction of the debt.

Complicated as is the system, it is not confused, and it works very well in composing all the constant trouble, the complaints and jealousies of the ever quarrelling six powers, five of which have really no interest in Egyptian affairs except to safeguard their citizens or corporations who are bondholders and — of course — to diminish England's power and prestige. The only exasperation is this, that to increase the amount of authorized expenditure for administration the consent of the powers has to be asked, and while from time to time they do give it, they are inclined to be grudging and nasty. This fact has made splendid internal reforms like those of education and justice very slow, and hence for these and similar purposes the enlightened rulers steadily increase the unauthorized budget. The *Caisse* has accumulated a considerable reserve fund, but so has the government; and so far the latter has not made any call on the other, meeting extra charges from its own funds. But further and very serious trouble is almost certain, for under this system the government is bound, whenever it does not secure an increase of authorized expenditure, to raise by taxation exactly double the amount it has need of for itself. This is a cardinal fact. To remove or at least diminish this serious difficulty is the most important of the questions lately negotiated between Paris and London.¹

There has already been one illustration of what may prove an

¹ As nearly as an outsider can comprehend the rather confused accounts of the recent Anglo-French agreement so far given to the public, about six million pounds are thereby released for use on public works.

almost insuperable difficulty hereafter. There have always been foreign experts, so called, and many of them in the service of the Egyptian government. At one, and that the formative, period most of these men were French, and with time some of the most important offices have come to be regarded by France as hers of right. To these she especially clings since throughout the Levant her influence, once paramount, is now steadily waning and is in fact entirely jeopardized by the hostile attitude of the government to French Roman Catholic missions. Under these circumstances secular power is not willingly relinquished, and no occasion is so lofty, no purpose so high, as to prevent France from demanding returns, however petty, for anything she yields. For ages it had been a matter of course in Egypt that irrigation canals should be built and maintained by the *corvée*, that the forced labor of the peasantry should be exacted with tyranny and corruption at their busiest season, and that it should be used quite as often for the private advantage of high officials as for state purposes. It was the preëminent abuse of oriental government. The English first stopped the abuses and then proceeded to abolish the system. Four hundred thousand pounds a year was needed. In the course of unifying and funding the debt great economies had been secured and the taxes correspondingly diminished. Under the various laws a saving of two hundred and fifty thousand pounds a year had been effected, and this could by the assent of the powers be applied to the abolition of the *corvée*. For three weary years the peasants sighed and groaned before France would assent definitively, and that she did only after securing certain substantial advantages in return.

As the financial revival has proved itself continuous everything has steadily improved. There is no tyranny, and, considering oriental ideas, very little corruption in the collection and distribution of the public moneys. In order to diminish the rate of interest by conversion, the capital of the debt has been somewhat increased, and a further increase of about one and a half millions has been caused by borrowing for public works. But the proportion between income and outgo has steadily improved, and together the *Caisse* and the government have saved some millions as a reserve fund, on which from time to time drafts for pub-

lic works are authorized. If this amount were deducted from the amount of the debt, the capital and interest would alike be diminished, but the government would lose its hard-earned liberty. As matters are, the soil yields far greater returns than ever, even allowing for an unprecedented decrease in prices; exports and imports alike increase, so that customs receipts mount ever higher and the receipts of the railways are of course larger and larger as there is greater and greater prosperity.

Take the central, vital, focal, inclusive question — that of water. In Lower Egypt, north of Cairo, there is some rain, but its value for agriculture is nothing. In Upper Egypt a light shower of five minutes' duration is rare, and soaking rain a phenomenon. But far in the heart of Africa under the tropics abundant rains are as regular as the seasons. So the great river, "which is Egypt," is for some months by nature a swollen devastating flood, surcharged with a deposit of fertility in the shape of red virgin soil. The alluvion of this soil has for untold ages made and re-made the shore strips of tillable land, and the floods, in their turn, have repeatedly torn this ground away to increase the delta or to be wasted in the Mediterranean. But between the bed of the river and the hills on either side are great expanses which of itself the water never reached. Accordingly the Pharaohs built canals parallel to the river and opening from it, from which water could be drawn for irrigation at considerable distances from the banks, and one monarch made a vast reservoir out of a natural depression in the soil, the Lake Moeris which Herodotus describes. This last was suffered to fall into disuse; the canals, however, have been to some extent rebuilt or maintained, and we still see on some reaches of the river retaining constructions which are said to date from very early times.

So things remained until the French designed and built a dam below Cairo on a most elaborate scale; it was intended to hold up the Nile when high and distribute the waters when needed to Lower Egypt. But their *barrage* would not bar. The masonry, when the sluices were closed, could not bear the strain and began to bulge. It was claimed that no foundation for such a work could be secured in Nile mud, and the beautiful, costly structure stood for years unused. The British engineers put an apron of

masonry laid in cement before its base and further strengthened it by stone weirs parallel with the current. It now holds up the high Nile, distributes red water where needed the whole year round, and works so perfectly that the two arms into which the river bifurcates just below it receive just enough water to keep navigation open and no more: one of them will probably soon be reduced to a canal.

So magical was the effect of this perennial irrigation on the direct returns of cotton, sugar and other staples that the government next built and put into successful operation a similar structure at Siut, two hundred and fifty miles further up the river, and it has just completed the stupendous dam at the first cataract, six hundred miles up from Cairo. When all the canals which the Nile can feed are completed, the arable land of Egypt will be doubled in acreage; and since almost the whole of it will be irrigated throughout the entire year, it will produce at least three crops! The population has already increased thirty per cent since 1882, and double the number of persons will soon live in peace and plenty on it. Many see the day in the early future when the stupendous current of the Nile at flood will be curbed like a steed, when there will be no devastation, and the irrigation engineer will have the tropical rains under control as the locomotive engineer has his machine. It was a stroke of genius to discover that the great reservoirs behind the dams already created or yet to be created need not be settling vats, arresting the fertile turbidity of the water, provided only the water were liberated, as it is, from the bottoms of the sluices and not from the top.

These may be considered the triumphs of British administration already either won or in sight. Taxes diminished, equitably laid and honestly collected; the complicated financial system made to work smoothly and economically; railways, post-office and telegraphs all excellent and efficient, with the trunk lines steadily lengthened, officials efficient, decent and honest; the army made effective for the national protection, the frontiers defined and protected, the Sudan reconquered and the personnel improved beyond recognition. These reforms and achievements have been slow and sure, the miracles of the irrigation department have

been swift and impressive: the total is likely to dazzle the traveller.

But in the lines of education and justice the case has been different. The police system leaves much to be desired; both insanity and certain classes of crimes, especially those against the person, have steadily increased. These are very knotty problems, because unlike the others they are inextricably complicated by the unity of Mohammedan religion with Mohammedan law and by the training of the young. The matter of education can be dismissed in a few words. The mosque of El Azhar in Cairo is the greatest centre of Mohammedan learning, so called: boys and young men of all ages to the number of about nine thousand attend there, at one time or another of the year, upon the instruction of self-appointed teachers. These commend themselves by their knowledge of classical Arabic, the Koran, and the commentators on the Koran who have written Mohammedan theology and jurisprudence as traditionally derived from the book. Very, very few are interested in either of the higher studies: for in Islam there are neither priests nor lawyers. The services of the mosques are performed by laymen distinguished for their known fanaticism and devotion: the Cadi hears all causes, listens to any pleading there may be by the litigants or their friends and gives his decision. Hence the really learned are few indeed; and they pursue their studies either in the hope of getting slender fees for teaching or of obtaining the higher appointments made by the chief of state, all of which combine in their duties both secular and religious elements, with a predominance sometimes of one, sometimes of the other. The Mohammedan world is an effort to expand patriarchal authority to the utmost.

Most of those who attend El Azhar therefore learn to read and write, and to recite the Koran: their arithmetic is either non-existent or negligible. With this outfit they return to their homes as schoolmasters. Every village of any size has a mosque, larger or smaller, and connected with it a school where little children sit swaying and committing by heart chapters of the Koran, no single sound of which conveys the slightest meaning to them, for spoken Arabic is even less like classical Arabic than our speech is like that of Chaucer. They may also be seen writing with a

sharpened reed on a whitewashed board, but not often. Otherwise their master carefully instructs them in bitter hatred for Christians, who are represented as a sort of modern crusaders, ready to devour every person and thing not of their own faith. This is a fair account of the education of Islam, as enjoyed by Egyptian boys; the girls get no attention, though some of them pick up by hook or crook nearly as much as their brothers. The Copts have from immemorial times had convents and schools where the formal learning of their church was taught with such intense interest that they actually forgot their own language. Of recent years these schools have had some new life infused into them under influences of which America may well be proud, *viz.*, the mission schools of the United Presbyterian Church, directed and supported largely from the state of Ohio.

A short time since there appeared in the most influential of the Paris newspapers an article declaring that ultimately, and perhaps at no distant date, the knotty question of the hither East would be settled not by any of the great powers of Europe, but by America! As France was once paramount in the Levant by her Roman Catholic missions, America had become so by her Protestant missions — and these missions, said the writer, the American nation will protect with its guns. There is truth in this general contention although the last proposition is doubtful. Roberts College has transformed the old Turkey in Europe, and her graduates are the statesmen of the little Balkan kingdoms struggling into decent life; the great American university at Beyrut furnishes the Arab world with professional men and, dull as the lump is, they are the leaven in it, steadily and surely though very slowly leavening it. Just fifty years ago the American United Presbyterians began work in Alexandria. To-day their schools, nearly all self-supporting, cover the entire land: they number about 125 and have probably 10,000 pupils. The instruction is admirable, comprising all the ordinary branches, with English, French and Arabic. Established originally for the Copts, and for boys, they now, with a majority of Copts, have also a large minority of Mohammedans, and about a third of the pupils are girls. In fact they are about to found a girls' college for which they have already raised two-thirds of the needed endowment.

The example has been most illuminating: as I have said, the minor offices are filled by young men trained in these schools, and the many United Presbyterian churches erected everywhere in Egypt at important centres are full of Copts. So the Coptic church has been roused from its slumbers and now cherishes its own schools into higher and higher development, while even the Mohammedans apprehend that if they are to keep any hold in their own land they must learn some of the things which they begin to see are absolutely requisite. The traveller hears of many schools in Egypt. They exist, but they are scarcely to be reckoned as Egyptian. There are close to a hundred and twenty-five thousand foreigners in the country. The Greeks are by far the most numerous, and they have their children taught somehow; then come the Italians, who have many well ordered schools for their own children; an effort is making to endow two or three schools on the English model, and so far it meets with encouraging success.

The khedivial, or ostensible, government has with its crude, inchoate concepts of European culture long been struggling to inaugurate a system of government education controlled by a minister of public education. It has been but moderately successful. Under the ministry is a committee of nine members: two English, two French, one Austrian and four Egyptians. They work through a single secretary who has substantial control, and he is an Englishman. Under this control are the khedivial library with a German librarian; an observatory with an Egyptian director; a board of three members, English, French and Egyptian, who examine for teachers' primary and secondary certificates; a staff of six inspectors: one English, one French and four Egyptian; and an office for the management of certain estates which have been assigned as educational endowments. The office staff of this bureau is wholly native. Directly under the secretary-general are fifty-six lowest grade schools like those of the mosques, with sheyks from Al Azhar as teachers; thirty-eight primary schools under Egyptian masters with government certificates; three secondary schools under English, French and Egyptian head masters respectively; and finally nine professional schools, two polytechnics, with French and Egyptian directors respectively, a school of agriculture under an Englishman, a law school with a French

director and an Egyptian assistant director, a medical school with an Egyptian principal and English vice-principal in control, a model polytechnic controlled in the same way and three normal schools with Egyptian, French and English heads respectively. This sounds well, not to say formidable. But the international direction would in itself prevent real unity of work and harmony of plan. The programmes, it is true, are good and fairly carried out, yet there are only about a hundred and fifty schools of the lowest grade and about forty-five of the primary schools. In all government institutions there are perhaps twenty-five hundred pupils. Throughout the land its proverbial darkness yet prevails — only one person in ten can read and write!

But a still darker side of Egypt is in the constant and almost epidemic miscarriage of justice. I do not refer to the native or oriental justice as administered by the local judges or cadis. This is what it always was, neither worse nor better — a curious intermixture of patriarchal severity and tenderness, conformable partly to the precepts of the Koran, partly to race tradition, and very often displaying good, shrewd common sense. What I refer to is the curse wrought on an innocent people by the capitulations of the Sultan, which as I have indicated were privileges granted in the day of his power to foreigners resident within his empire: a good-natured gift which, since the foreigners have secured a power greater than his own, he dare not and cannot recall. Fifteen powers, including the United States, dispense these privileges — immunity from taxation (except the land tax), immunity of domicile and immunity from the jurisdiction of local courts — not only to their respective resident subjects but to the natives attached to their consulates under the law of extraterritoriality.

These consular courts still exist and open the way for unmeasured abuses; it may serve to mention one alone. Neither municipal laws nor police regulations can be enforced against foreigners without the unanimous consent of the fifteen powers, a thing almost impossible to get! To this monstrosity a score of others could be added: it is the foreigners, in large measure Greeks and other southern Europeans, who carry on organized smuggling, who keep brothels and gambling hells, who use the inviolability of their houses for dozens of nefarious purposes. It is they who

debauch the public morals in all the large towns. One can very well imagine what the consular courts of minor powers might be; but it is painfully notorious that France has used the capitulations to the ruthless furtherance of all her interests as no other nation has done which claims to be enlightened.

Since England has been in power there have been secured certain modifications of these old treaties making for improvement. Foreigners have at least to pay taxes on their houses, and certain courts have been organized which do some of the work once entrusted to the various consular courts. On the other hand the closer contact of Europeans with the native peasantry and the prosperity of the latter have both been accompanied by deplorable results. The fellah, waxing fat, has kicked. His religion sits much lighter upon him and, his purse being fuller, he does things which sadly demoralize him. What is to the European a sin against himself is to the Mohammedan a sin against God, and this consciousness makes him desperate where the other is only repentant. The common Egyptian of town and country gets and drinks whiskey both openly and secretly, he smuggles and smokes more and more hasheesh, he eats more meat and heating food than the climate permits; and as a consequence there is a steady increase of crime without any corresponding increase of efficiency in the police, the police courts, or the courts with criminal jurisdiction. Perjury and false witness are regarded as venial faults; an unwillingness to denounce crime and an eagerness to shield criminals characterize the great man and the little.

The remedy for this deplorable situation has not been found. The upper classes, including the foreigners, are calling loudly for reform; but that requires money and, as in the cases of the abolition of the *corvée* and the improvement of the irrigation system, the inexorable *Caisse* will not yield the money. The head of the Mohammedans, the Sheyk-ul-Islam, is at this moment suggesting that the pious and learned men of Cairo, the *ulemas*, go out and conduct revivals of religion throughout the land.

In its forced impotence the British authority contemplates regeneration in a purely secular way. The religious courts seem to work fairly well. They deal with the personal status of Mohammedans and are called *mehkemés*; they comprise three cate-

gories, courts of first instance, of appeal and of execution. Their head is the Grand Cadi who employs two supervising inspectors. Next below him is the Grand Mufti whose functions are quite general and then come the cadis of the towns and villages.

The police operate in a sufficiently logical sequence. There is a public prosecutor, an Englishman, who controls the bureau of criminal investigation with an English director, and parallel with this bureau there is a *parquet* or sort of grand jury with the duties of a public prosecutor which controls the relations of the ministry of the interior with the courts. Under this last are the *mudirs* or heads of provinces and the police force. This is controlled by fourteen English, two hundred and thirty Egyptian and twenty continental European officers holding commissions: the non-commissioned officers and men number about fifty-seven hundred, all Egyptians except a hundred and eighty. They appear to be a smart, well set-up body of brisk young fellows, all very proud of their European uniforms.

The courts are organized under a committee of judicial supervision which consists of five members, three English, one French and one Italian, and is controlled by one of the great English officials known as Judicial Adviser to his Highness the Khedive. Under this committee are two English and three Egyptian inspectors, who exercise general supervision over the national tribunals. These consist of forty-five summary courts with one judge each and jurisdiction up to a hundred pounds and three years imprisonment, seven courts of first instance with seven to ten judges in each court, and a court of appeal consisting of twenty councillors, of whom ten are Egyptians, eight are British and two are continental Europeans. There is likewise a court or committee of four continental Europeans which controls claims against the state.

Finally there are three so-called mixed tribunals, courts sitting at Cairo, Alexandria and Mansoorah, which were intended to be a link between the consular and native courts, transacting the bulk of the business so pitifully botched in the former and thus inspiring some respect for the government of Egypt. At first they were the bulwark of the bondholders, but they also have jurisdiction in suits between natives and foreigners, and between

foreigners of different nationalities. Their proceedings are in French, Italian and Arabic; as yet, strangely enough, they do not permit the use of English, although two of the judges are Americans. The British appear to have no special fondness for them, although they mitigate the abuses of the consular courts substantially. But they were the device of Nubar, and they have on several occasions applied the brakes when English officials were going too fast.

Both the native courts and the mixed tribunals use in procedure a modification of the Code Napoleon, which though not yet sufficiently adapted to Egyptian conditions is in form and principle fairly good. Their almost utter worthlessness at the beginning (1884) and for some time later was due to the fact that suitable men could not be found for judges. Unsuitable men enough there were, young fellows who went to France, got a smattering in some decent law school or bought a diploma from the then disreputable faculty at Aix, and returned to secure an appointment by favoritism. The courts reeked with corruption, their procedure was slow and costly, their method complicated. Most of the causes required something altogether different, the issues being simple and small. The worst vice of these courts was on the criminal side, for after long effort and despite many improvements, the administration of criminal justice is still complicated, slow and uncertain. But much has been accomplished by the rigid inspection provided in the outline given above, by demanding substantial diplomas from candidates for the bench (the Cairo Law School is now very efficient), and by the extension of summary justice through the establishment of the circuit system.

Thus gradually the courts are improving and the character of the bar rising: sometimes threats are heard of amalgamating the mixed tribunals with the native courts, so good are the latter likely to become. But the former rest on the assent of fourteen powers who can easily be brought to renew their mandate every five years, as is done, and cannot easily be brought to a common assent to abolish them. They are likely to continue for a long time therefore, although their final disappearance is sure. Meantime, their work is the more important because, as is only human,

the judges magnify their office, consider as mixed causes for their jurisdiction many doubtful cases which the British prefer to have go before the regular courts, and because by agreement litigating natives bring cases which clearly belong elsewhere to the mixed tribunals. It has been charged that they do this as a matter of style, to show contemptuous indifference to their own people, a curious oriental quality. But the charge is untrue: Egyptians go before the mixed tribunals because they are absolutely sure to get justice, which is as yet not the case when trial is had before the native courts.

It is thus easy to see how the polyglot international confusion so prevalent everywhere in Egypt prevails too in the courts. Add to this the ordinary official jealousies, and the imperfect administration of justice is easily accounted for. The worst effect of native jealousy toward foreign influence is seen in the case of the police. The principal city districts, six in number, are under governors, all Egyptians; as too are the twenty-six *mudirs* who preside over the provinces. In old days the Pasha or ruling class were all Turks: as yet many of these governors and *mudirs* are Turks too, but with a difference. Then they were virtual viceroys and had the police entirely in their control; their favorite punishment was the *kurbash*, or whip of alligator hide. This brutality has now been abolished and the authority of the *mudirs* over the police limited, partly by government inspectors, partly by a division of responsibility. Provinces are divided into districts, these into townships, and these last into villages. Over the district is a *mamur*, over the township an *omdeh*, over the village a sheyk.

The village watchmen, or *gaffirs*, were once very numerous and no better than bandits in disguise. They have now been much reduced in number and the sheyk is responsible for their efficiency to the *omdeh*, a man generally of real dignity and importance. If he needs the police he applies to the police official of the district through the *mamur* and is directly responsible with the police officer for what is done. There is continuous conscription for the army in Egypt, but as few men are needed only the selected conscripts are taken to serve six years under the flag. Thereafter these fine fellows, who are comfortable and well content with their pay, are divided between the army reserve

and the police. These last ought to be, and when well directed are, entirely competent men.

The British feel that in the present crisis they have a choice of two courses, either to multiply European officials or to compel closer attention to duty both by the European heads and Egyptian hands, keeping the inspectors more continuously resident within their respective districts, and generally practising greater severity on offenders. This latter process has begun; it remains to be seen how effective it may prove. It is doubtful whether, even if the money for reform could be had from the *Caisse*, which is highly improbable, they would care to multiply officials, courts and policemen. The number of natives fit for office is exhausted and the native quality improves very slowly. Then, as has been said, it is dangerous to increase the number of European and British officials; what is required especially in the case of the latter is high quality; better a few first-rate men than any degeneracy in character through increase in numbers.

There are, outside the war office and the police, nine hundred and sixty-four foreigners in the service of Egypt, and of these three hundred and sixteen, less than a third, are British; the rest are Italian, French, Greek, Austrian, Germans and scattering, in that order, the Italians two-fifty-six, the French one-eighty-six. As the grand total of civil servants is eleven thousand three hundred and six, the proportion of English is astonishingly small. Lord Cromer and his colleagues seem determined that it shall not increase. The departments of finance, interior, justice, and public works are monopolized virtually as far as foreign officials are concerned by the British, and are therefore purely Anglo-Egyptian. It is claimed and properly, I believe, that these are the most efficient departments of the government; international shackling and meddling has been the curse of Egypt as of other Oriental lands, and where there are the variegated and jarring prejudices of different nationalities, there of course is to be found confusion and wrong. Since the adjustment of her French relations, England probably looks to see the entire government Anglo-Egyptian at some distant day, but meantime hers is the golfer's cardinal motto: "Don't press." Lord Cromer has announced as his policy: *Ohne Hast aber auch ohne Rast*.

These appear to be the two sides of the shield from the point of view of an English protectorate, and there can be no question but that British administration has on the whole met with signal and brilliant, almost dazzling success. Yet there is a mystery. It lies of course in the system of Islam. Such travellers as spend a few weeks or even a winter in Egypt should be slow to form opinions. Nevertheless they see and feel something, and sometimes the quick perception of a passer-by is truer than the unobservant habitual look of a resident. It seems as if the population of Egypt were capable of no other loyalty than that which they undoubtedly feel for the Khedive and the Sultan. The British are hated and know it: fortunately they also know why. First there is the cumulative interest of every other power against them, to thwart them where possible, to misrepresent them everywhere. Then there is the Khedive. His father knew that England had saved his throne and after Arabi's rebellion he behaved like a man of sense. This young man, like almost every heir to a throne, appears never to have been in sympathy with his father and to have dreamed of a return to his grandfather Ismail's unrestricted despotism tempered by some enlightenment. In any case at the outset of his reign he showed a preference for French influences and finally went so far as to tamper with several English institutions, including the army. He received a smart piece or two of "advice" and thereafter for some years kept his place, though rather sullenly. Latterly he seems to realize the inevitable and to follow his father's example. The British believe that the native press, in Arabic of course, which is uniformly hostile to them was, for a time at least, subsidized from the palace. Now, this is no longer the case. For all that, newspaper hostility has not ceased. It must pay because, as far as a superficial observer can judge, the people as a whole, while they hate the Turkish Pasha class, still regard the Sultan as the Caliph, the successor of the prophet, and the Khedive as his vice-regent. It is amusing to see a tall Nubian draw himself to his full height, strike an attitude with his right hand on his heart and say: "My King, the Sultan, Abdul Hammid, bestowed medals and the title of Pasha" on so and so. For him and his kind there is but one supreme permanent authority, that which is administered by the govern-

ment of his Khedive Abbas Hilmi and interpreted by the *mehmemés* and *ulemas* or men learned in the law. All else is transitory and mediate.

No one understands this situation better than the British, and when the Khedive succeeded no Mohammedan was more eager than they were for the proper Firman of the Porte establishing the new authority over Egyptian Moslems. Well aware of this fact, the Porte and its officials shrewdly exacted and got the last farthing of the customary fees before, after weeks of carefully protracted negotiation, the wonderfully bedizened and illuminated parchment was in due and solemn form exhibited to the populace from the steps of the Abdin Palace in Cairo and there read to them aloud in a perfect form, secured only at the last moment by telegram and, of course, for a consideration. King Edward has more Moslem subjects than the Sultan, by far, and his ministers well understand that the price of outward calm is careful conformity to Moslem traditions and nice consideration for Moslem prejudice. They dare not make a slip nor give the slightest hold to fanatical enmity. The French and native journals are ready to give the signal: hostile powers wait like hounds in a leash, and apparently even yet would make the leap, if only they could reach the British throat. But their dream is vanity: after all, this bond around Egypt is like others which bind the British Empire; though it looks gossamer, it is efficient and sufficient.

WM. M. SLOANE.

REVIEWS.

A History of Mediæval Political Theory in the West. By R. W. CARLYLE and A. J. CARLYLE. Vol. I: *The Second Century to the Ninth.* By A. J. CARLYLE. New York, G. P. Putnam's Sons; Edinburgh and London, William Blackwood and Sons, 1903. — xvii, 314 pp.

The Development of European Polity. By HENRY SIDGWICK. London, Macmillan & Co.; New York, The Macmillan Co., 1903. — xxvi, 448 pp.

The Political Theories of the Ancient World. By W. W. WILLOUGHBY. New York, Longmans, Green and Co., 1903. — xiii, 294.

If any doubt has existed as to the utility of the study of political ideas in their historical development, the almost simultaneous appearance of these three volumes ought to do much toward removing it. In these works representative men of three great educational institutions, Oxford, Cambridge and the Johns Hopkins University, manifest their conviction that such study is worthy of the best effort that ripe scholarship can bring to bear upon it. However different the points of view and the methods of treatment, all the authors alike contribute to the one end of removing from English literature the reproach to which it was long exposed, that it embodied no adequate treatment of the history of political ideas.

Professor Sidgwick's work is posthumously published under the editorial supervision of his wife. It differs in general character from the other two volumes under review. While they agree in devoting much attention to the political ideas which are to be found explicitly or implicitly in the literature of the periods covered, Professor Sidgwick's interest is more in the generalizations which are possible from the actual institutions of successive epochs in history. His work follows to a great extent the method of Freeman's *Comparative Politics*. It is a study of governments rather than of anybody's theories about them, and the author's end is to formulate a history of political ideas by immediate

induction from the transformations through which political systems have passed, from the earliest known conditions in classical antiquity to the era of the modern state. We find described, in that philosophical spirit and judicial temper which Professor Sidgwick so preëminently typified, the broad outlines of Greek political development, the salient features of the Roman constitution, the feudal period, the theocratic features of the middle age, the growth of the free cities, the epoch of absolute monarchy and the national and federal systems of the most recent centuries. Of the philosophers who in these different ages contributed by reflection, systematic or otherwise, to illustrate the institutions with which he deals, the author discusses only Aristotle and Plato among the ancients, and Hobbes, Locke, Montesquieu and Rousseau among the moderns. Comment on this fact and on certain features of arrangement and proportion in the volume would probably be unjust or misleading, owing to the circumstances attending the publication of the work, the author having had no opportunity to give it the final form.

Messrs. Willoughby and Carlyle differ from Professor Sidgwick and agree with each other in undertaking in their respective volumes a chronological, expository and critical description of the philosophy based upon political institutions rather than of the institutions themselves. Professor Willoughby's period is that of classical antiquity from the earliest times to the end of the Roman political system in the West. Mr. Carlyle has for his period the centuries of the Christian era from the second to the ninth inclusive. In each case the present volume is but the first of an indeterminate number.

If we may judge from the proportions of these initial volumes, the Carlyles intend to cover their chosen field much more minutely than Professor Willoughby covers his. This conclusion is strengthened by a comparison of the general spirit and method of the two authors. Carlyle keeps close to the literature of his period. He has but little philosophy of his own to apply to the interpretation of the authors or the institutions with which he deals, but he brings forth from his notebooks a mass of quotations, from writers of every degree of prominence and obscurity, to illustrate the thought of the time. Willoughby, on the contrary, seems rather bored by the necessity of following closely the literature of his period. He prefers to cut loose from the record and to characterize a thinker or a system or an epoch by reflections of his own. Often also — possibly too often — he finds it more effective to incorporate a page or so of reflections quoted from some other modern critic. In both his own and the borrowed comments he manifests

clearly, what his previous publications have sufficiently shown, the Hegelian tendency of his thought. It goes without saying that an historian of this type, a follower of the world's greatest master of broad generalization, can not be expected to display on his pages anything of that laborious accumulation of material that appears in Carlyle. When Willoughby reaches the Patristic and early mediæval period, he will not devote, as Carlyle does, some six or eight pages to the thoughts of Sedulius Scotus and Cathulfus, or trace at length the sinuosities of reasoning in Ambrosiaster and Hrabanus Maurus; while Carlyle, if he should ever take up the Greek period, would never think of dismissing the Stoics and Epicureans, as Willoughby does, without mention of any individual adherent of these sects save Zeno, but would fairly revel in fragments gathered from the innermost recesses of Voigt and the *Corpus Inscriptionum*.

The two chapters in which Professor Willoughby is at his best are those on the "General Characteristics of Greek Philosophy" and "the Value of the Greek Civic Ideal." However doubtful the reader may be at some points as to whether any actual Greek ever was conscious of the views attributed to the abstract Greek, the Willoughby-Hegelian interpretation of Hellenic politics is very rich in suggestion. In the treatment of Plato and Aristotle the historian could hardly be expected to discover an untrodden path. Practically the only possibility of anything new in the estimate of the political ideas of these two philosophers lies in a careful re-reading of the original Greek by a scholar especially trained in the concepts and terminology of modern political science. Professor Willoughby, while eminently qualified in this last respect, seems to have made little or no resort to the text of the Greek writers; and the translations which he has used, especially in the case of Aristotle, have hardly been adequate to the requirements. For example, the statement on page 167, that "the theory of the separation of powers also finds a place in Aristotle's thought," would probably not have been made, if the words of the Greek philosopher rather than the English translator had been considered.

Mr. Carlyle's purpose necessarily involves an exhaustive examination of a large mass of little exploited literature. He seeks to discover the obscure beginnings of the process through which the mediæval philosophy of politics became impressed with its characteristic features. The chief elements of this philosophy he perceives to be, first, the theories of Imperial Rome, particularly of the jurists, and second, the social and political teachings of the Church Fathers. While the first of these elements is fairly accessible, the latter is to be discovered and

properly appreciated only by a careful analysis of the writings of a very considerable number of men who were for the most part interested in nothing so little as in politics, and whose references to political ideas are in the last degree casual, subsidiary or perfunctory. Under such rather discouraging circumstances, Mr. Carlyle's work must be pronounced, on the whole, good and worth while. He succeeds in presenting, with some real suggestion of coherency, the thought of the Patristic age on natural law, slavery, property, government, the authority and sanctity of a monarch, and the relation of state and church. He has no illusions about his subject and readily concedes at many points that what appears to be an expression of serious conviction on the part of an author may be in fact merely the manifestation of credulity, fear, indolence or some other of the intellectual or emotional conditions which in those centuries so often took the place of ratiocination. From Gregory the Great he passes to the ninth century, and in dealing with this epoch the allowance necessarily made for poverty of intellectual resources is accentuated. Due recognition is given to the fact that the writings of the age, even in the case of personages of such large calibre as Hincmar of Rheims and Hrabanus Maurus, consisted in no small measure in the mechanical repetition of passages from the Church Fathers and a few other sources. But with all this allowance, Mr. Carlyle is able to discover, not indeed any general system of political theory, but the apprehension and development of certain important conceptions, namely, "the equality of human nature," "the sacred character of the organized structure of society in government," and "the necessity of checking the unjust and tyrannical use of authority." In connection with this latter point, the author suggests that the influence of Teutonic tradition definitely enters at this time to modify the ancient Roman conception of princely superiority to law.

It appears to the reviewer that the utility of Mr. Carlyle's work would have been substantially enhanced by the introduction of some account, however slight, of the actual political institutions of the successive periods with which he deals. But even without this, his volume is very welcome, and furnishes quite the best account we have of those occult channels through which ancient political theory was transmitted to the mediæval world.

Part I of Mr. Carlyle's volume, in which he lays the foundation for the real theme of his work, deals with the political ideas of the Romans and covers the same ground which is traversed by Professor Willoughby in the latter part of his volume. There is afforded thus an opportunity for comparison of the two authors. The first fact to strike the observer

is that Willoughby does not mention Seneca, while Carlyle devotes a whole chapter to him. At first blush it seems as if Willoughby were at fault here; not only does the account of Seneca's reflections given by Carlyle indicate that the Roman moralist thought much on various important phases of politics, but anyone who reads later mediæval literature to even a slight extent becomes very quickly aware that the ideas and very often the words of Seneca's better known epistles were staple commodities. But on the other hand, Professor Willoughby has a certain justification for his omission in Carlyle's own treatment of Seneca; for after practically every description of the Roman's views on an important point, Mr. Carlyle is obliged as a candid writer to insert a caution against the possible insincerity of the philosopher: "He often mistakes rhetorical sentiment for profound ethical emotion" (p. 19); "These phrases may no doubt be said to be rhetorical, and it would be foolish to overpress their practical significance" (p. 21); "We may find much of merely rhetorical sentiment in all this" (p. 22): — such are the qualifications with which Seneca's philosophy is presented. There can be no doubt that the modern reader, even if he resolutely excludes from his mind the influence of certain rather unpleasant facts in connection with Seneca's relation to Nero, finds it impossible to take the beautiful and often most impressive writing of the Roman at its face value. There is in all his moral essays a pervading sense of unreality if not of actual hypocrisy. Perhaps this is why Professor Willoughby refuses to consider his ideas at all.

Cicero also is treated by both historians, and on the whole their estimates of him are identical. It is Carlyle and not Willoughby who designates him as "a well-mannered and honorable-minded philosophical amateur." Only an Englishman could devise that characterization. It reflects the same felicitous blend of the social with the scientific standard that appears in Sir Frederick Pollock's judicial utterance about the Spartans, that they "produced in the whole course of their wars only two officers who are known to have been gentlemen." In connection with Cicero's philosophy an interesting comparison is suggested by the parallel reading of Willoughby and Carlyle. In the *De Republica* is given a definition of *Respublica* which has figured largely in later political theory. Cicero says: "Est respublica res populi; populus autem non omnis hominum cœtus, quoquo modo congregatus, sed cœtus multitudinis iuris consensu et communione utilitatis sociatus." The reviewer has been interested to observe the translation of this by the two historians, particularly the rendering of the last clause — "iuris consensu et communione utilitatis sociatus." This seems reasonably

easy Latin, yet the two writers do not agree at all in putting it into English. Willoughby reads: "bound together by the compact of justice and the communication of utility." Carlyle, on the other hand, has it: "united under a common law and in enjoyment of a common well-being." These obviously are very different thoughts. The reviewer himself is on record as having rendered the passage in question as follows: "united by a common sense of right and by a community of interest." This of course is something quite different from either of the renderings given above. For one interested in the small things which in science are often great, it would seem worth while to give considerable attention to the question as to which of these three translations comes the nearest to the expression of Cicero's actual thought. Possibly, however, the whole situation arises from the fact that Cicero here, as a "well-mannered philosophical amateur," had no precise thought at all, but expressed a somewhat vague notion as to the foundation of a popular state in words that were instinctively selected more from the rhetorical point of view than with reference to precise connotation.

Still another topic which yields an interesting comparison of the two historians — and indeed Professor Sidgwick also might be considered here — is that of the Roman jurists' doctrines as to *ius naturale* and *ius gentium*. Willoughby devotes eighteen pages to this subject and presents therein with some fullness the ideas of Maine, Clark, Muirhead, Nettleship, Sohm and others whose names are suggestive of modern rather than ancient theories. Carlyle covers the general subject in only twelve pages (though there is further treatment under special heads later) and fortifies his discussion with citations from Gaius, Paulus, Ulpian, Florentinus, Tryphoninus and others whose names seem strikingly appropriate to the subject. But though the two historians differ most markedly in the method of dealing with the subject, the few facts and conclusions which are pertinent to a history of political theories are almost precisely the same in both works. And this raises the question whether it is really essential, in such works as these, to deal so seriously with the problems that cluster about the vagaries of Justinian's compilers in the selection of passages on the law of nature and the law of nations. Some half dozen phrases of the Digest embody all that has been historically of significance in the progress of strictly political thought, and this significance has come through reading into the phrases ideas of which the Roman jurists were wholly innocent. The subsequent history, not the prior history, of these phrases seems to be the field of the student of political theory. All the details as to relation of *ius gentium* and *ius naturale* in the Roman mind belong

really to the student of jurisprudence; and it will certainly be long before anything more in the way of material is necessary than what is so systematically and exhaustively presented in the great work of Voigt.

WM. A. DUNNING.

Local Government in England. By JOSEPH REDLICH, edited with additions by FRANCIS W. HIRST. London, Macmillan & Co. Ltd., 1903. — 2 vols.: xxvi, 427 pp; viii, 435 pp.

Reference has already been made in this JOURNAL (vol. xiv, p. 525) to the valuable scientific literature on English local government written outside of England. This work adds another to this class; and is distinctly the most comprehensive treatment of the subject yet published. The author is connected with the faculty of law and political science in the University of Vienna. Mr. Hirst has not merely translated the German text into a distinctively English style, but has also made corrections and many additions, including two new chapters written entirely by himself.

One half of the first volume is devoted to an historical account. After a brief survey of the development of the English constitution to the end of the eighteenth century, showing the relations between the central government and the local officials, there is a more detailed description of the steps in the reorganization of local government during the nineteenth century. This is not merely an account of parliamentary action; but discusses also the foundations of the new legislation in the political philosophy of Jeremy Bentham and John Stuart Mill, and its relation to the constitutional changes during the same period in the organization of the House of Commons. The results of the Reform Act of 1832 are seen in the reform of the poor laws and of the municipal corporations, the two measures being based on distinct and opposing principles — the one bureaucratic and plutocratic, the other democratic and autonomous. The next period includes the development of sanitary, police and educational legislation, and shows the tendency towards combining the contradictory principles of the preceding legislation into a harmonious system, based on a democratic franchise and central administrative control. And after the third Reform Act, there comes the measures by which the local government in the counties, county districts, poor law unions and rural parishes is made representative and democratic; while out of the patchwork of historical areas and conflicts of jurisdiction something like order and system is established.

Two-thirds of the entire work is a descriptive account of the existing local authorities and the system of central control. This again is much more than an analysis of statutory provisions regulating the administrative organization and powers; it includes also a careful investigation of the actual working of the various organs, the interpretation of difficult provisions of the statutes by the law courts, and the intricate financial arrangements.

Among the local authorities, first place is given to the municipal boroughs, the oldest of them, and the model for the constitution of the more recently created bodies. The description of municipal government adds a great deal to previous works on this subject. Besides a full statement of the legal position of the municipality and the statutory organization and powers of the town council, there are chapters on municipal politics, the internal machinery of town government, the functions of the boroughs and municipal finances. Of these, the accounts of political methods and the internal machinery of government are especially noteworthy. Municipal elections, we are told, tend to come more and more under the operation of the party system; but "the elections over, party color rapidly fades and absolutely disappears from the ordinary business of municipal administration." The methods of the town councils and the system of committees are fully set forth and illustrated; while for the first time one finds an adequate notice of that invaluable functionary in the English system, the town clerk. As is to be expected in a work written from the administrative rather than from the sociological point of view, the chapter on the sphere of municipal government is mainly a statement of statutory powers, and does not give illustrations of the detailed operations in different cities such as Mr. Albert Shaw has given in his books.

In its broad outlines county organization presents a similar picture to that of the municipal boroughs. In its operation, the democratic franchise has not given the mastery, nor even any direct share in county administration, to the agricultural laborers; and the county councils are composed mainly of the propertied classes, — "government by horse and trap." Even counties sending radicals to Parliament often elect councils conservative in tone. Nevertheless it can be said that the people now govern through the ruling classes, instead of being merely governed by them; and a spirit of progress has been superimposed "upon the traditional honesty and thrift of the old patriarchal style of administration."

Little more than mention can be made of the chapters on county districts, urban and rural, poor law unions, parishes and local educa-

tional administration. The last includes an account of the Education Act of 1902 by Mr. Hirst. In general it may be pointed out that the legislation on all of these subjects applies the same main principles of local organization which govern the borough and county systems, while leaving ample room for local variations to suit widely different conditions. In this respect, the whole body of legislation on English local government is well worth the study of those trying to remedy the evils of special legislation in the United States.

One serious omission in the description of local authorities must be noted. There is no account of the administrative organization of the metropolis; and no satisfactory reason given for the omission.

In the examination of central administrative control, most attention is naturally given to the Local Government Board, with special reference to its two main divisions of poor law and public health. But there are also short descriptions of the supervision over local authorities exercised by the Home Secretary (mainly in reference to police), the Board of Education, the Board of Trade, the Board of Agriculture, and temporary commissions of inquiry. In this discussion, emphasis is constantly laid on the difference between the English methods of central control, and the bureaucratic centralization in the countries of continental Europe. The basis of the English system may be found in the dictum of John Stuart Mill that while "power may be localized, knowledge to be most useful must be centralized." This principle is applied by means of reports, inspections, audits of accounts, executive orders authorized by statute, and certain limited quasi-judicial powers of deciding appeals. And the results of these methods are strongly commended, as may be illustrated by the following extract with special reference to the police control:

Any attempt to set up a central department with power to lord it over the local authorities would be regarded as a direct encroachment upon the constitutional rights of citizens. It would be treated as an attack on the independence of the courts of law, and must inevitably fail. On the other hand, the leaders of conservative opinion would readily agree with liberal and radical statesmen that a return to the complete decentralization and independence of local police authorities which characterized the older system is unthinkable. It is universally recognized that the methods of prevention and detection used by the police should be similar in all parts of the country.

Concluding the descriptive section is a chapter on the control of Parliament and the law courts over local government. Here the author

repeats literally Mr. Dicey's statement that there is no administrative law in England, a statement which is at least open to misunderstanding. Mr. Redlich's own account itself shows that while there are no special administrative courts and no separate *system* of Administrative Law, there is a large amount of substantive administrative law, established by legislation, by executive orders and by judicial decisions, and incorporated in the law of the land. To say that England has no administrative law is almost as erroneous as to say there is no equity jurisprudence in those American states which have no separate body of chancery judges.

The third division of the work is a criticism of Professor Gneist's well known works on English local government and constitutional history. Not content with showing that recent legislation renders Gneist's books out of date as a description of present conditions, Mr. Redlich attacks the earlier writer's theories and general attitude in true German polemical style, and with an acerbity which seems to be actuated by a standing Austrian hostility to anything done by a Prussian.

In spite of these points of criticism, the solid constructive work of the authors ranks this as distinctly the best account of the existing English system of local government. Its scholarly character is further indicated by the apparatus of bibliographical references, footnotes, a table of law cases, a table of statutes and a fair index at the end of each volume.

JOHN A. FAIRLIE.

UNIVERSITY OF MICHIGAN.

A Treatise on International Law. By WILLIAM EDWARD HALL. Fifth Edition, edited by J. B. ATLAY, of Lincoln's Inn, Barrister-at-Law. Oxford, at the Clarendon Press, 1904. — xxiv, 764 pp.

In the nine years that have elapsed since the appearance of the fourth edition of Hall's treatise, events of great importance in the intercourse of nations have occurred. Many of them will occupy a larger place in the history of diplomacy and foreign policy than in that of the law of nations; but some of them are of great importance for international law, and deserve a fuller treatment than that of the mere chronologer. We have in the United States excellent examples of two methods of editing a celebrated book on international law — the editions of Wheaton's *Elements* by Lawrence and by Dana. Lawrence's notes generally are long, and often are almost encyclopedic. Dana's take the form of brief monographs, discussing concisely the principles

of law involved in particular topics. Mr. Atlay might well have chosen a middle course; and certainly notes as brief as his will fail to satisfy the demands of the publicist and lawyer. The present edition may be useful as a school book, but the editor's contribution is of little value to the specialist.

Mr. Atlay's additions appear in brackets in the body of the text or in the foot notes. The longest connected passage supplied by him is that relating to the Venezuelan boundary dispute (pp. 111-113); but it makes no mention of the rule laid down in the treaty for the guidance of the arbitrators, namely, that "adverse holding or prescription during a period of fifty years shall make a good title;" nor is this referred to in connection with the paragraph on "Prescription" (p. 118). The Hague Peace Conference in its relation to international arbitration receives a suitable notice (pp. 364-366); although the first case before the Permanent Court of Arbitration (The Pious Fund of the Californias) is dismissed in two lines. In a note (p. 365) reference is made to the recent settlement of the Alaskan boundary, but chiefly to call attention to the "serious blot on the proceedings — the manner in which the United States chose to construe the term, 'impartial jurists of repute.'" There is no statement of the points in controversy. Two surprising omissions are the absence of all reference to the adjustment, by means of the Hay-Pauncefote convention, of the dispute over the Clayton-Bulwer treaty, and to the question, so much discussed at the outbreak of the Boer War, of British suzerainty over the Transvaal. This last was a difficult and knotty question; but with Cuba, and possibly Korea (hereafter), among the number of semi-sovereign states, the discussion of this form of sovereignty is likely to become important. No notice is taken of Cuba (save for a reference to the non-assumption of the debt by the United States in the peace treaty of 1898), either with respect to its entrance *pro forma* into the family of nations, or with respect to its peculiar status under the so-called Platt amendment.

The brief war between the allied European powers and Venezuela in 1902-03 is adverted to in connection with the subject of Pacific Blockade (p. 372), but no explanation of the grounds of intervention is given. Nor is it stated that the intervention, which at first took the form of a pacific blockade, ultimately became war *de facto* and *de jure*. It was admitted to be such by Premier Balfour in the House of Commons, after the United States had given notice of its intention not to be bound by the so-called blockade. Professor Holland subsequently pointed out that the institution of prize courts at Trinidad was incompatible with any theory but that of legal war.

The facts in the case of the "Bundesrath," one of the German ships seized for carrying contraband to the neutral port of Lorenzo Marques, during the Boer War, are neatly summarized in a note (p. 670), and the conclusion is reached that the seizure was sustainable on legal grounds — a conclusion which tacitly reverses Hall's opinion as expressed in connection with the subject of "continuous voyages."

In proportion to other topics, much space is given (p. 301) to the case of Mr. Blair, whom the Chinese government in 1891 refused to receive as minister from the United States, because of views expressed by him in Congress on Chinese Exclusion; but nothing is said of the retirement in 1898 of Señor Dupuy de Lome, Spanish minister at Washington, in consequence of the surreptitious publication of a personal letter in which he referred offensively to the President and government of the United States.

A comparison of the table of cases in the present edition with that in the fourth, shows a citation of ten new cases. Six of these are American, relating, with one exception, to the war with Spain.

J. F. BARNETT.

GRAND RAPIDS, MICHIGAN.

A History of Modern England. By HERBERT PAUL. In Five Volumes. Vols. I, II. New York, The Macmillan Company, 1904. — 450, 446 pp.

These two volumes cover the period from the resignation of Sir Robert Peel in 1846 to the death of Lord Palmerston in 1865. At the present rate of progress, the three yet to appear should carry the story down to the retirement of Mr. Gladstone in 1894. Notwithstanding the author's preliminary criticism of Seeley's theory that the historian is concerned with man only as belonging to a state (I, p. 19), the history is so far preëminently political. There are, to be sure, several admirable chapters dealing with literature, science, art, and the church, but the economic development of the country is almost entirely neglected. However, this will not seem such a serious defect to those of us who are old-fashioned enough to believe that historical orthodoxy should not be tested by the creed of the political economist.

Mr. Paul has opinions and he is not afraid to express them; at the same time, he is usually, though not always, sufficiently broad-minded to see the other side of the question. One can easily surmise that he is in politics an advanced Liberal, if not a Radical, and in religion a very broad churchman. To the reviewer, the most pleasing feature of the

book is the emphasis which it lays upon the personal element. Lord Palmerston is of course the central figure. A follower of Canning, he regarded it as England's duty to interfere actively in continental affairs, and to pose as the champion of liberal ideas, or as Paul rather unsympathetically expresses it:

He was a great European diplomatist, who wanted England to have a finger in every pie. . . . He was interested in the affairs of every European country, and always ready to give his advice whether it was asked or not. He was never impartial. He always took a side, and though he hated reform at home, he loved revolution abroad [I, 236.]

The Spanish marriage episode, the Pacifico-Finlay dispute, the *coup d'état* of December 2, 1851, the Crimean War, the struggle for Italian unity, and the war in America are all discussed in the light of the Palmerstonian policy.

In the Spanish marriage controversy Paul supports the traditional British view, which is favorable to Palmerston and fixes the blame on Louis Philippe and Guizot. No new evidence is given, however, to combat Spencer Walpole's defense of France. According to Walpole, Lord Aberdeen agreed with Guizot that the Duke of Montpensier, son of Louis Philippe, should marry the younger sister of Queen Isabella of Spain, but not until after the queen herself had married and had issue. It was further agreed that the queen should be restricted in the choice of her husband to the descendants of Philip V. Shortly after Palmerston succeeded Aberdeen in the foreign office in 1846, he sent instructions to Bulwer, the British envoy at Madrid, in which Leopold of Saxe-Coburg was mentioned among the queen's suitors. Then, in characteristic Palmerstonian style, he launched into a criticism of the despotic government which existed in Spain. If this document had merely been sent to Bulwer, trouble might still have been avoided. Palmerston, however, handed a copy of it to Jarnac, the French chargé d'affaires in London. Louis Philippe and Guizot regarded the mention of Leopold as a violation of the agreement made by Lord Aberdeen, while the royal family in Spain were naturally indignant at Palmerston's officious remarks about their government. The result was that the courts of France and Spain were drawn more closely together, and both marriages took place on the same day, the queen to the Duke of Cadiz, and the Infanta Louisa to the Duke of Montpensier. (See Walpole, *History of England*, IV, 515-528.)

There was one peculiarity about Palmerston's conduct as a cabinet member which Paul brings out very clearly, namely, his habit of un-

dertaking most important business without consulting the crown or his colleagues in the ministry, or even letting them know what he intended to do. His offenses in this respect were so frequent and so flagrant that the queen in 1850 sent him a formal note of protest. She demanded that he should state distinctly what he proposed to do in a given case, in order that she might know to what she had given her royal sanction; that a measure which she had once approved should not be altered arbitrarily or modified by the minister; and finally that she should be kept informed of what went on between the secretary and the British representatives at foreign courts and should be given an opportunity to read the despatches. This pointed reproof had only a temporary effect. After the *coup d'état* of December 2, 1851, a cabinet meeting was held, and the government decided to adopt a policy of strict neutrality. The authorities at Paris were so informed, but before the note was sent Palmerston expressed to Walewski, the French ambassador, his approbation of the president's act. This undignified, not to say unconstitutional, behavior exhausted the patience of the queen and Lord John Russell, and Palmerston was dismissed from office.

Palmerston's conduct on this occasion was certainly open to criticism, but Paul is perhaps too severe. He apparently has found it impossible to be judicious in discussing any question with which Louis Napoleon was concerned. "Napoleon the Little" was a "base impostor," a "public criminal," whose "murderous usurpation of supreme power in France" was without any justification.

He was under a heavy obligation to the Church of France, which had welcomed him and his accomplices with public thanksgiving in the Church of Our Lady, the Mother of Christ. The neighboring morgue had been a fitter place [I, 239, 266, 300, 338; II, 9].

The responsibility for the Crimean War is placed on three men, and the Emperor Nicholas is not among them. They were Palmerston, Napoleon III, and Lord Stratford de Redcliffe. Palmerston was in the Home Office, but his influence over the foreign secretary, Lord John Russell, was supreme. The prime minister, Lord Aberdeen, never faltered in his desire to preserve peace, but he was convinced that Lord John was indispensable to the government and that the dissolution of the government would bring on the war (I, 311). He permitted Palmerston and Russell to drag the country into the conflict, and then remained in office, not because he loved power, but in order that he might use his influence to procure an honorable peace. But

there is another side of the question, presented by Kinglake, which should not be ignored. If Palmerston had been prime minister, the Emperor Nicholas would have known what to expect and would have been more willing to make concessions. With Aberdeen in office, he comforted himself with the dangerous belief that England did not seriously intend to go to war. (See Kinglake, *Invasion of the Crimea*, I, 301-302, 309-310). Paul's sarcastic statement that this notion is "akin to the Chinese theory that battles can be won by wearing hideous masks, and uttering horrible sounds" (I, 342) is hardly a sufficient reply. The influence of Lord Stratford de Redcliffe at Constantinople is not overestimated. The fact that he was the real power behind the Ottoman throne is cleverly indicated by the frequent enclosure of the words "the Sultan" in quotation marks. The account of the part played by Napoleon III in this conflict, however, does not harmonize very well with the author's picture of an "imposter" of mediocre talent.

The least satisfactory part of the book is that dealing with the Civil War in America. Many of us will not agree with Mr. Paul that John Brown was a "hero and a martyr of freedom" (II, 295), and that Jefferson Davis was a "puppet chief" and "a man of no account" (II, 297, 341). The Dred Scott decision was sufficiently complicated to deceive most American students of history and constitutional law, but we believe that no one has ever said before that the Supreme Court decided "through Chief Justice Taney, that the master of a negro slave might pursue him from a Slave State into a Free State, capture him, and bring him home" (II, 296). Mr. Paul might also have explained more fully his statement that

two-thirds of the Senate and the House of Representatives might, with the consent of the people, have amended the Constitution so as to abolish slavery altogether. But in that case no wrong would have been done to anyone. . . . [II, 296].

In spite of a few unfortunate precedents in that direction, we can hardly admit that "it rested with Congress to determine the constitution of a new State" (II, 296). Either Mr. Paul, or Lord John Russell, or both of them, have misunderstood the exceptions in the Emancipation Proclamation:

This proclamation was most unjustly and ungenerously criticised by Lord Russell, who complained that it did not free the slaves in the Northern States, when no such process was required, inasmuch as they would have no masters who could reclaim them [II, 336-337].

McClellan's name is spelled "M'Lellan." There is a fairly good account of the Trent episode and a brief analysis of public opinion in England on the American question, but these must necessarily suffer by comparison with Rhodes.

The reviewer hopes that he has succeeded in emphasizing the fact that, whatever other criticism may be passed on this work, Mr. Paul cannot be accused of being insular. Indeed, no adequate history of the Palmerstonian era could possibly have that defect. Among other foreign and colonial questions discussed are the Hungarian rebellion of 1848, the Dalhousie régime in India, the Sepoy Mutiny, the Kaffir War of 1851, and the Chinese War of 1857-1858. With the exception of the Civil War in the United States, all the foreign and colonial problems of the period have been treated carefully and in the main accurately. There is an occasional slip, as, for example, when he speaks of Lord Elgin as the pioneer of western civilization in Japan (II, 188). Commodore Perry preceded him by four years. In his account of the Sepoy Mutiny, Paul agrees with Lord Roberts that the story of the greased cartridges was true.

Limitations of space forbid more than a mere mention of a few of the domestic questions considered, such as the Irish famine, the Chartist movement, Gladstone's budgets, the struggle for parliamentary reform, and the various church controversies. There are excellent pen pictures of Lord John Russell, Lord Derby, Lord Aberdeen, Disraeli, Gladstone, Dalhousie, Earl Canning, Jowett, Pusey, Wilberforce, Spurgeon and others. In politics the author seems especially to admire Aberdeen, Cobden, Bright and Gladstone; in literature, Macaulay, Tennyson and Matthew Arnold.

The style is clear and readable, and there are none of those philosophical digressions which mar the otherwise valuable work of Spencer Walpole. There is not a dull page in the entire two volumes. The chapters on literature and the church would probably be more effective if they were grouped together. The same might be said of some other subjects. After all it is simply a question of the chronological *versus* the topical method. Mr. Paul prefers the former.

W. ROY SMITH.

BRYN MAWR COLLEGE.

American History and its Geographic Conditions. By ELLEN CHURCHILL SEMPLE. Boston and New York, Houghton, Mifflin & Company, 1903. — 466 pp.

Geographic Influences in American History. By ALBERT P. BRIGHAM. Boston, Ginn & Company, 1903. — 366 pp.

The simultaneous publication of these two volumes is fortunate, for they treat the same subject, with just enough difference of emphasis to make them complementary. Both books deal with the relation between history and geography, but from opposite points of view : Miss Semple studies the relation from the historical side, and shows to what extent the course of American history has been determined by geographic conditions; Mr. Brigham views the relation from the geographical side, and points out the geographic influences at work in American history.

Miss Semple begins her historical account with the voyages of discovery, indicating in first instance the effects of European geography upon the colonization of America; she then traces the lines of the Atlantic-flowing rivers, showing their effect upon the early explorations and settlements; this brings her to the Appalachian barrier and its influence upon colonial history. Following the trend of history from this point, Miss Semple depicts the "Western Movement" in its "relation to the physiographic features of the Appalachian system," and then describes "the geographical environment of the early trans-Allegheny settlements;" from this she proceeds to "the Louisiana Purchase," and thence to the Far West by the northern and southern routes, checking the course of Western expansion all along the line with geographic conditions.

Mr. Brigham begins his geographical description with the valley of the Hudson and Mohawk, which he calls "the Eastern Gateway of the United States"; he then contrasts "Shore Line and Hill-top in New England," and comes by these two lines to the Appalachian barrier. The trans-Allegheny region Mr. Brigham plots off into a series of environments: "the Great Lakes," "the Prairie Country," the "cotton, rice, and cane" fields, the arid region, "where little rain falls," the Rocky Mountain region, "mountain, mine, and forest," and the Pacific Slope, "from the Golden Gate to Puget Sound"; and shows the significance of each in American culture.

Among the most suggestive chapters in these volumes are those devoted to the geography of war. Miss Semple assigns two chapters to

this subject, one on "the geography of sea and land operations in the war of 1812," and the other on "the geography of the Civil War"; Mr. Brigham confines his attention to the Civil War. Of more immediate interest are the chapters on the international geography of the United States, on "the growth of the United States to a continental power geographically determined," as Miss Semple expresses it; or "geography and American destiny" in Mr. Brigham's phrase.

Both books are good. By way of comparison I should say, Miss Semple's is academic, Mr. Brigham's popular; this is true only so far as the style is concerned, however, for in material and arrangement each sets a scientific standard. This difference in style is enhanced by the illustrations, Miss Semple employing maps and charts exclusively, — and extremely good ones, while Mr. Brigham adds a wealth of excellent photographic reproductions of typical scenes taken from different sections of the country. The only criticism I would offer — and I fear at the present stage of development it may seem hypercriticism — is to this effect: The course of history is affected far more by economic geography than by physical geography pure and simple. Economic geography has to do not so much with the environment itself as with the potential utilities inherent in the environment. Neither Miss Semple nor Mr. Brigham takes this distinction into account: both are content to call attention to the effects of physical geography upon history, to the influence of mountains, plains, rivers, sea-coast, *etc.*, on the trend of progress. There can be no doubt that these influences are to be observed, but further study would reveal the more potent influences exerted upon American development by the character of the natural resources, the potential utilities inherent in our varied environment.

LINDLEY M. KEASBEY.

BRYN MAWR, PA.

The American Revolution, Part II. By the RIGHT HON. SIR GEORGE OTTO TREVELYAN, BART. Volumes I and II. Longmans, Green & Co., New York and London, 1903. — 353, 344 pp.

Sir George Trevelyan's work, beginning years ago with a brilliant study of the early career of Charles Fox in its connection with the court and the aristocratic society of the time, has been continued through a further study of that same society viewed in contrast with the far simpler life and ideals of the American colonists. In the part now issued it expands into a detailed history of some of the chief phases of the colonial revolt. The two volumes which are the subject of this notice

are occupied chiefly with the events of 1776, both in Europe and America. In Europe the author traces the development of English opinion concerning the war, making use for the purpose of the newspapers, the correspondence of statesmen, the pamphlets of the time, the observations of persons who were travelling through the country, the reports of foreign ministers resident, as well as parliamentary debates and the results of local and general elections. The negotiations for the employment of German mercenaries are also outlined, as well as the attitude of Frederick the Great toward this transaction and toward the war in general.

Among events in America itself the reader's attention is specially directed to the campaign in Canada, to the military operations in and about Manhattan Island, to the retreat through the Jerseys and the American successes at Trenton and Princeton. Much attention is paid to the armies, on both sides, to their officers, their organization, their spirit, their achievements. In this connection the pacific disposition and fatal delays of Howe are given a prominent place. In the account of the later phases of the Canadian expedition, including the retreat of the Americans, full justice is done both to the abilities of Sir Guy Carleton and to the brilliant personal exploits of Benedict Arnold. Charles Lee comes off with unusually severe and contemptuous treatment. Somewhat in the background — until Trenton and Princeton — stands Washington as the embodiment of dignity, patience and organizing power, but forced, by the limited extent of his resources and the crude instruments with which he had to work, to maintain what seemed a losing contest. When, however, he recrossed the Delaware on his raid into New Jersey, he appeared as the brilliant and resourceful partisan leader. The author justly throws these events into bold relief, for by means of them the prolongation of the struggle by the Americans was insured until they could secure foreign aid. In no work which aims to be a systematic history of the Revolution has so much attention been paid to the character of the American soldier, to his excellencies and defects, and to the system and leadership under which he worked. This constitutes one of the most realistic and successful features of the volumes which thus far deal with the war.

The development of American opinion as exhibited in pamphlet and newspaper and in the utterances of the various legislatures and revolutionary congresses has been very fully treated by earlier writers. Except so far as the question of independence itself was concerned, the literary controversy had mostly spent itself before the time of which the author treats in these volumes. Sir George Trevelyan, moreover, in-

terests himself but slightly in mere political struggles and constitutional changes. For these reasons the theory of the revolution, the process by which the administrative system of the revolutionists was developed, the work of the Continental Congress, the collapse of royal power in the various colonies and the rise of new governments based on written constitutions in its stead, receive little or no attention at his hands. In fact the question of the colonial episcopate is assigned more space than are matters of this character.

From what has been stated the reader may infer that the work which Sir George Trevelyan is publishing is not a balanced or well rounded history of the Revolution in either its political or social phases. It contains rather a series of suggestive essays or studies on important social and military aspects of the struggle. Beaten paths are to an extent avoided. A disproportionate amount of space is devoted to certain topics, while others are slurred over and neglected. The writer is not systematic in arrangement and method. He is discursive, and does not allow himself to be seriously hampered by considerations of proportions, least of all by the order of events in time. Occasionally there is evidence—as in his treatment of Rev. William Gordon—that he is not thoroughly abreast of the critical work which has been done upon the sources for the history of the period. But his reading is wide, and for the purposes of the work in most respects is ample.

Every reader must be struck with the points of resemblance between this work and Macaulay's *England*. Both are frankly partisan in their tone. Both possess a distinct and powerful literary charm. Both abound in acute and detailed analyses of character and in vivid descriptions of events. Both are the work of statesmen, of men of affairs. Both writers plunged at once into the midst of their subjects, without in all respects, taking due account of the antecedents from which the crisis they sought to depict arose. Both have, to a large extent, viewed the events and characters which they sought to describe from their own standpoint and from that of the time and class to which they belong. In the case of an event so recent as the American Revolution, that of course does not make so much difference; while it is also true that Sir George Trevelyan's partisanship is not so much in evidence in these volumes as in the first which he published. But his work throughout is based on the supposition that the separation of the colonies from the mother country was almost the inevitable, if not quite the most desirable, result of the dispute. He is quite sure that serious perils to English liberty were averted by the revolt.

To the general reader and to the literary critic Sir George Trevelyan's

history will always and justly appeal with great power. But to the scientific historian, to the sober student of social and political forces, it will not be wholly convincing or satisfactory.

HERBERT L. OSGOOD.

Insurance and Crime. By ALEXANDER COLIN CAMPBELL. New York and London, G. P. Putnam's Sons, 1902. — xiv, 408 pp.

Insurance and Crime has the merit of being a very readable book on a subject of great importance, and on the whole seems admirably adapted to accomplish, at least in part, the purpose which the author sets before himself. That purpose, as stated in the preface, is

to awaken the interest of the common people in a subject which seems to me [the author] of vital importance to the common people in these modern days, and, through that interest, to bring about changes which shall prevent the recurrence of the abuses of the past and correct the abuses of the present [p. ix].

It is unfortunate that the author did not see fit to supplement his popular treatment by more detailed statistics showing the extent of the evils described. For in spite of the scantiness and too frequent unreliability of the available material on the subject, there are many sources of information, even in English, of which no use is made in the work before us.

Nor is it only on account of the absence of such statistical information that the serious student of insurance will find the book disappointing. The method of treatment adopted is selective rather than exhaustive, and the particular periods and individual crimes selected for description can by no means be called typical; on the contrary they are almost invariably extreme cases. Furthermore the language used in characterizing the evils resulting from insurance is extreme and sometimes somewhat intemperate. We can hardly take literally the statement "that it [insurance] has given rise to whole systems and cycles of evil; that there is hardly a crime in the calendar of which it has not been the prolific mother and the assiduous and successful nurse" (p. 9). In short the book bears throughout the stamp of the argument of a lawyer before a jury rather than that of a scientist's cool and impartial statement of fact. It may for that reason be better adapted "to awaken the interest of the common people," but it cannot be admitted to the select class of books which are at once popular and scientific.

The main body of the book consists of two parts. The former deals with evils for whose existence the insured are responsible; the latter, under the caption "Company Frauds," describes a number of wildcat companies and their method of operation. The teaching of the former part of the book may be summed up in a few words. Legitimate insurance encourages carelessness, and the wilful neglect of precautionary measures on the part of the insured; insurance by a person who has no insurable interest in the object of it, and over-insurance, furnish a direct incentive to crime on the part of the insured. It is obvious that these evils are not of exactly the same kind. It is only by a broad interpretation that the title of the book can be made to cover all cases in the first group. For no one can maintain that all carelessness or every neglect of possible preventive measures is criminal.

The extent to which insurance is responsible for careless destruction of property is overestimated. The author appears to confound the question, how much insured property is destroyed through carelessness, with the very different question, how much greater is such destruction than it would be if the property were not insured. It is impossible to prove that in any particular case a man was careless because he was insured. In the nature of the case the argument must be largely *à priori*. The same kind of argument might be used to defend the position that insurance has little effect on the amount of loss. For carelessness is a matter of habit and character and not a matter of calculation, and a person cannot assume or lay aside the practice of carefulness at will. That insurance in some measure increases carelessness seems probable, but undoubtedly it has much less effect in this direction than our author or people in general assume.

On the other hand the possibility of securing protection against loss by means of insurance undoubtedly leads to the deliberate neglect of preventive measures. The author gives some striking illustrations of that fact from the history of marine insurance. But here again he overemphasizes the magnitude of the evil by failing to point out that there is a limit to the extent to which it is desirable to go in adopting preventive measures. However difficult it may be to decide practically just what precautionary measures it is economically advantageous to adopt, theoretically the line is easily drawn at the point where the cost of the preventive measure equals the resulting reduction in loss.

Over-insurance and its direct incentive to crime is the most important subject of which the book treats. The characteristic crime of marine insurance is barratry, that of fire insurance is arson, that of life insurance is murder. Barratry, which prevailed to an appalling

extent a century ago, is now almost unknown. Arson on the other hand is not uncommon, and seems on the whole to be on the increase. The author brings out very forcibly the influence exerted by the existing method of remunerating fire insurance agents, by commissions on the amount of insurance written, to dull the scent of the agents for over-insurance and fraud.

In the increase in the number of murders committed for the sake of obtaining insurance the author sees the greatest danger at the present day from the institution of insurance. He gives us no statistics from which to judge of the prevalence of the evil or of its growth, but is content to describe at unnecessary length two or three recent notorious crimes of this nature. The insurance of the lives of young children by their parents receives special consideration. It is encouraging to note how few instances the author was able to discover of the murder of young children for the purpose of obtaining insurance money. Indeed, for the United States there is not a single well-authenticated instance on record.

The remedies which the author proposes for the evils described are three in number. Insurance should be strictly limited to insurable interest; more weight should be given to the so called "moral" element in a risk, *i.e.*, to the character and circumstances of the person desiring insurance; and the method of remunerating agents should be changed. The last proposal, although the change is very desirable, the author acknowledges to be somewhat quixotic, and confesses himself unable to suggest any practicable substitute. The second remedy is one which must be applied by the insurance companies if it is to be done at all, and is also one which it would be very difficult to enforce equitably. Moreover the recommendation might well have been made more general, to the effect that risks should be classified more minutely and the premiums be made to vary more closely with the risk. This would greatly reduce the tendency of the insured to neglect proper precautionary measures, since the adoption of any such measure would cut down the cost of insurance.

With regard to the first proposal, to limit insurance strictly to insurable interest, it may be said that the law already prescribes such limitation. In the insurance of property the law is strictly administered. A court would refuse to enforce an insurance contract when it was shown that insurable interest was lacking. In the case of life insurance, however, the term is construed liberally, a certain degree of relationship being held to establish a presumption of insurable interest. A person paying the premiums on his own policy may name any per-

son whomsoever as beneficiary. In certain special cases a contract is held valid if there were insurable interest when the contract was entered into. Thus a creditor may take out a policy on the life of his debtor, and may continue the policy in force even after the debt has been paid. It certainly seems desirable that the doctrine of insurable interest should be applied more strictly in life insurance than is now done. The complete enforcement of the principle would clearly remove all incentive to crime by the insured as a result of insurance.

It is unnecessary to follow the author in his account of "company frauds," since wildcat companies are rather an excrescence on the body of insurance than a part of the system. It is somewhat astonishing to find that the remedy proposed by the author is the removal of all legislative restrictions upon the formation and management of insurance companies. Obviously the current of public opinion, as indicated by the course of legislation in the United States, runs in the opposite direction. Moreover there are at least two good reasons for the common practice of restriction and regulation. In the first place people in general, and the poorer classes in particular, are incompetent to pass upon the qualifications of insurance companies. In the second place unrestricted competition would be an imperfect and extremely costly method of determining fitness to survive in this field.

In conclusion it should be said that the author has brought together in this book a great deal of information about insurance in general, as well as about the specific subject of the book, and has presented it in an interesting way. The information is not new or difficult of access for students of the subject, but it has not before been readily accessible to "the man on the street." Much of it moreover is information which it is extremely important for him to possess.

ALLAN H. WILLETT.

BROWN UNIVERSITY.

Municipal Trade: The Advantages and Disadvantages resulting from the Substitution of Representative Bodies for Private Proprietors in the Management of Industrial Undertakings. By MAJOR LEONARD DARWIN, New York. E. P. Dutton & Company 1903. — 354 pp.

There are few books on this vexed question of so judicial a temper and of so thorough and comprehensive a character. Every paragraph of the work contains an argument for or against what in America we call municipal ownership of public utilities. An extended analysis of

ents precedes each chapter, and in addition, a single brief thesis, statement of the thought of the chapter. A short appendix gives a summary of the joint parliamentary report of 1903. The work has an excellent index. The chief forms of municipal activity treated are: markets, baths, harbors, piers, water supply, gas, electric lighting, tramways, omnibuses and house-building, together with the subsidiary operations connected with the chief ones considered.

The reader is never for a moment left in doubt as to Major Darwin's position as an opponent of municipal ownership on the scale in which is now practiced in England, to say nothing of further advance, which the author regards as inevitable. Nevertheless, Major Darwin presents almost every possible argument on the other side with a fairness and fullness quite unusual in any work on a controverted subject. He frankly and frequently admits that no general formula can be laid down, but that, within wide limits, each case must be decided upon its own merits, and in the light of the particular circumstances connected with it. Yet with each chapter it becomes increasingly plain that our author is a thorough individualist, and a firm, yet reasonable adherent of the classical or orthodox school of economics.

In fact, every important conclusion reached by him rests ultimately on the assumption that the field of effective competition is wider than those who hold a more radical theory of social progress and the distribution of wealth would for a moment admit. He says (analysis of chapter xi, page xx), "Our conclusions must be largely guided by common-sense considerations; and such considerations tell against municipal house-building." This thought runs through the whole work. The *a priori* method is first employed and the results then tested by such statistics as are available.

The only service which our author is willing to turn over to public ownership and management is that of domestic water supply. The distinction between this and other forms of municipal service is that water, being a prime necessary of life, should not be sold by measure, that the supply of it is a monopoly, and that no substitute can be found for it. To those with a different conception of social solidarity and human progress, it would naturally occur that while partial substitutes may be found for other services, and consequently a somewhat greater degree of competition may be introduced, such competition is, in many instances, at least, of so limited a kind as to fall far short of the desired results. While no one will raise any objection to Major Darwin's methods and arguments, many will find themselves compelled to disagree with him in his conclusions, since these are based upon estimates

of the relative weight of various considerations which are not in themselves susceptible of exact measurement.

What has just been said applies with special force to our author's treatment of the statement that the decision in any particular case should not rest entirely upon the relative economic efficiency of private and public management. Nearly all will agree with this in the abstract; but when we attempt to decide what degree of efficiency is a fair offset for certain social inconveniences and evils, real or supposed, we are no longer guided by the facts in the case, but by our social theories and preconceived ideas of the comparative importance of these two entirely incommensurable elements.

If we turn to Major Darwin's direct attempt to compare the results of public and private management in these undertakings, we find once more that his conclusions rest on his ultimate social and political philosophy. He insists that we ought not to compare present private and municipal management, but reformed private and public management.

While he freely admits that in all cases of monopoly, either public ownership or public regulation is necessary, yet he concludes that regulation offers the greater hope. In the last analysis this conclusion rests on the belief that progress in the past has been largely due to private initiative, and that such must be the case in the future. Adherents of another school of social philosophy, however, will hardly admit the unmixed beneficence of competition in the past; moreover, they believe that changed circumstances are narrowing the field in which competition works to the advantage of society. Furthermore, they believe that the very philosophy which makes us cling to private ownership is likely to make attempts at the regulation of private enterprise ineffectual.

The work is thoroughly English in its point of view, although it contains many references to American municipal corruption. Major Darwin advocates a commission of the central government to deal with municipal service, basing his suggestion on what he conceives to be the work of commissions in Massachusetts. He declares that for purposes of control a local commission is not only a prejudiced party, but is also sure to be lacking in the necessary technical knowledge.

Greater familiarity with American experience in commissions would doubtless have led the author to modify his suggestions on this subject. He proposes but one commission, which shall have control of all these undertakings of various kinds for the whole of Great Britain; and proposes to give it important powers in granting concessions to companies as well as in controlling the companies. If American experience teaches

anything, it teaches that the part played by such a commission in granting concessions would make it less effective as a controlling agency, while the extent and variety of its powers would prevent its members from ever becoming thoroughly expert in any one line.

JOHN H. GRAY.

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The Tenement House Problem, Including the Report of the New York State Tenement House Commission of 1900. By various writers, edited by ROBERT W. DEFOREST and LAWRENCE VEILLER, 2 vols. New York, The Macmillan Company; London, Macmillan & Company, Ltd., 1903. — xxxi, 470 ; vii, 516 pp.

First Report of the Tenement House Department of the City of New York, January 1, 1902 — July 1, 1903. By ROBERT W. DEFOREST, Commissioner. 2 vols., 1904. — vi, 426; 480 pp.

The failure of the state of New York to make any appropriation for the publication of the valuable report of the tenement house commission of 1900 was matter for general regret, but the volumes under review more than make up for this deficiency. They include not only the material collected by the state tenement house commission, of which Mr. deForest was chairman and Mr. Veiller, secretary, but the tenement house law of 1901, as amended in 1902 and 1903, and an introduction written by Mr. deForest indicating what has been done under that law by the tenement house commission. By rare good fortune the editors of these volumes, who had rendered conspicuous service to the cause of tenement house reform as chairman and secretary, respectively, of the tenement house committee of the Charity Organization Society, organized in 1898, were chosen commissioner and secretary, respectively, of the tenement house department created by the act, which as members of the state commission they had helped to draft. Thus the very men who did most to secure needed modifications in the law were those charged to see that the new provisions were enforced. The results have shown that in this case, at any rate, the reforms advocated were practical, and the reformers the men best fitted to secure their execution.

The volumes under review present an exhaustive examination of all the different phases of the tenement house problem. Following the general report and recommendations of the commission are chapters on tenement house reform in New York City, 1834 to 1900, housing

conditions in other cities at home and abroad, statistics of tenement houses, tenement house fires, fire escapes, back-to-back tenements, sanitation, financial aspects of the question, the views of tenants, the views of an inspector, tuberculosis, parks and play grounds, the evils of prostitution and policy playing, public baths, *etc.* These chapters are supplemented by ten appendices, giving among other things a digest of the laws previously passed, the present law, and an account of the meetings of the commission and of the testimony submitted to it. The work is abundantly illustrated with pictures revealing present evils and with sketches and plans of actual and projected model tenement houses. Finally, it is supplied with an excellent index.

Confronted with such an embarrassment of material, the reviewer cannot perhaps do better than to repeat in outline the story told in these volumes. The evils resulting from bad housing conditions in New York began to receive attention as early as 1842. The Association for Improving the Condition of the Poor addressed itself to the problem shortly after its organization in 1843 and has ever since played an influential part in securing tenement house reform. The first tenement house law was passed in 1867. From that time until the enactment of the law of 1901 there was more or less continued agitation for further restrictions which failed to bear fruit, partly because of public indifference and partly because of the non-enforcement of such laws as were secured. Incidents of this period were the erection in 1855 of the first model tenement house by the Workmen's Home Association, and its speedy reversion to the condition of one of the worst tenements in the city. Equally discouraging was the award of the first prize in the competition set on foot by the *Sanitary Engineer* for a model tenement for a lot 25 × 100 feet to the designer of the notorious dumb-bell tenement. Both events illustrate the difficulty of foreseeing the results of a departure from the established order in connection with the construction of tenement houses. The building of high tenements was begun about 1879 and the predominance of the dumb-bell type since that date leads the commission to the declaration that housing conditions in New York City were actually worse, from the point of view of sanitation, in 1900 than they had been fifty years before when the agitation for improved tenements was first seriously begun. An important forward step was the holding of the tenement house exhibit under the auspices of the committee of the Charity Organization Society, in the winter 1899-1900. This was viewed by over 10,000 persons and aroused more public interest in the tenement house problem than had ever before been shown. An immediate result was the appointment of

the state commission of 1900 by Governor Roosevelt, out of which the remarkable progress of the last three years has grown.

The failure of the protracted agitation for tenement house reform to accomplish beneficial results must be ascribed partly to the indifference of the state legislature, shown by its failure to enact needed laws, partly to the lack of adequate appropriations for the inspection of tenement houses and the enforcement of such laws as were passed, and partly to the inefficiency and corruption of city officials charged with such enforcement. The last evil is obviously one that cannot be remedied by legislation. To cure the first and second, the commission of 1900 made recommendations which constitute the chief provisions of the present law. Of these the most important was the creation of a separate tenement house department with a commissioner at its head receiving a salary of \$7,500 and a force of one hundred and ninety inspectors, charged with the task of making monthly inspections of occupied tenement houses and seeing that the law was complied with in every particular. To increase the power of the tenement house commissioner over builders of new tenements, the law provides that plans for such buildings must receive his approval before operations may be begun and that a certificate must be secured from him, declaring a finished tenement to be in conformity with the law, before the latter may be occupied or before the water may be turned on by the water department. Finally, the new law prescribes in detail the rules to which a tenement house must conform, including the proportion of the lot that may be built over, the minimum size of the yard and of inner and outer courts, the building materials to be used, the arrangement of fire escapes, the provisions for light and ventilation. It requires that separate water closets and running water shall be supplied to each apartment in new tenements, and thus prevents in new buildings the recurrence of the incredibly bad conditions that are presented in some existing tenement houses.

Mr. deForest's brief account of the results of the new law is most gratifying, especially as his optimistic assertions are borne out by the observations of those familiar with the tenement house districts of the city. Among the important changes that have been effected are the prevention of the horrible dumb-bell type of building and the elimination of the discredited air-shaft from tenement house construction. Over-crowding has been reduced and the sanitary conveniences, light and ventilation enjoyed by tenement house dwellers, have been greatly improved. Moreover these changes have been accomplished without discouraging investment in tenement house properties. Building under

the new law, after a short period of hesitation and uncertainty, has gone forward at a rapid rate, and builders and contractors who were at first bitterly opposed to the new restrictions, are now, if not enthusiastic in their support of the law, at least reconciled to it and willing to admit that the bad results which they predicted have not followed. The short experience of the tenement house department has shown clearly what may be accomplished by a competent inspecting force paying regular visits to the tenement houses of the city and unwilling to accept bribes for special favors. The provisions of the law in reference to the lighting of hallways, and other matters, which have long been a dead letter, are now complied with to the satisfaction of tenants and with increasing willingness on the part of tenement house owners. Contractors have even learned that a profit is to be made from improving the conveniences of old tenement houses, and many of the latter have been purchased on speculation and remodeled in conformity with the law. It is gratifying to learn that such speculations have usually proved successful.

Space will permit only the briefest reference to the *Report of the Tenement House Department*. Its greatest merit is that, in addition to describing what the department did during the first eighteen months of its existence, it explains how it did it, and that so fully that by the aid of the *Report* alone a similar organization could be created in any part of the world. Mr. deForest has modestly kept himself out of the picture so far as possible, but the simple story, told by means of extracts from inspectors' reports, official orders, *etc.*, of the way in which this new department was built up from nothing to one of the most important branches of the city government, bears eloquent testimony to his talent for organization. Many of the devices which he introduced for recording facts collected and keeping a check on the work of subordinates might be introduced with advantage into other departments, and it is to be hoped the *Report* will be widely read by those entrusted with the practical administration of public affairs. Like the volumes on the tenement house problem, the *Report* is abundantly illustrated with photographic reproductions, maps, charts, *etc.*, which serve to make the whole situation vividly clear to the reader's mind. Together the two works constitute a veritable encyclopedia of information about tenement house conditions in New York City, and their publication may without exaggeration be said to mark an epoch in this department of city administration in the United States.

HENRY R. SEAGER.

The Adjustment of Wages: A Study in the Coal and Iron Industries of Great Britain and America. By W. J. ASHLEY. Longmans, Green and Company, London, New York, and Bombay, 1903. —xx, 362 pp.

The text of this volume is composed of eight lectures which were delivered by Professor Ashley on the Dunkin foundation at Manchester College, Oxford, during the first three months of last year. The lectures deal chiefly with the subject of collective or corporate bargaining respecting the remuneration and conditions of labor in Great Britain and America. For some time now this method of collective arrangement has superseded the individual agreement in practically all the large industries of England, and, despite much opposition from employers, has made considerable progress in the United States. The author has selected for examination the allied group of industries which have to do with the production of coal and of iron and steel; in the first place, because of the magnitude of these industries, employing, as they do, tens of thousands of men, practically all of whom, in England at any rate, are organized in unions; and, secondly, because these industries best represent the development of the collective bargaining idea. The growth of this form of bargaining has led, especially in England, "to the institution of a certain mechanism for adjusting the remuneration of labour," and it is to a study of this mechanism in its various forms and the very important questions of principle which arise in the course of its working that the author gives special attention.

Preliminary to the more specific discussion of principles the author lays down the broad proposition that unionism should be looked at from the points of view both of psychology and of business administration. As to the psychology of the matter, "unionism is only an example on a large scale of the natural gregariousness of similars." Where tens of thousands of people work under the same conditions, with the same standard of living, and are influenced in their income and expenditure by the same decisions of their employers, they naturally come together, talk over their affairs, and develop a class feeling (pp. 12, 13).

From the administrative point of view, the carrying on of industrial enterprises on a large scale necessarily involves common rules. In the modern large enterprise it is administratively impossible to make specific arrangements as to wages and conditions of employment with each individual workman. Moreover, an employer is seriously hampered if, in addition to the supervision of technical processes and com-

mercial details, he is compelled to be ever on the alert against the competition of rivals who obtain labor more cheaply than he. A common rule of wages for an entire industry is therefore a labor-saving device of great importance to the employer (pp. 14, 15).

In Great Britain the organization of labor in the several coal-mining districts is practically all-embracing (p. 30), while the whole field of the iron industry and a large part of the field of the steel industry is covered by a network of boards of conciliation (p. 142). These organizations of labor have for many years been formally recognized by the employers and through their officers and various boards have negotiated regularly with representatives of their employers; and "not as a matter of condescension, or charity, or courtesy, but as a simple matter of business" (p. 11).

Similarly, in the United States, collective bargaining or, as it is coming to be called here, the "joint agreement" has been adopted in these industries: very generally in the bituminous coal industry in the older coal-producing states; to a very limited extent in the anthracite coal industry, since the great strike; and to a considerable extent in the iron and steel industries. In none of these industries, however, is the institution by any means so permanently established as it is in the parallel industries of Great Britain. And, if we except the operators of the soft-coal industry, especially those of Illinois, it may also be stated that the attitude of employers in this country even in those industries where the joint-agreement idea has made progress, is for the most part one of tolerance rather than of sympathetic coöperation.

In his comparative study of the working mechanism by means of which the workmen of the two countries carry on negotiations with their employers, Professor Ashley shows many parallelisms and some striking differences. In the coal industry, for instance, there is the Miners' Federation of Great Britain, which corresponds with the United Mine Workers of America, although the former is probably more nearly all-embracing than the latter. Again, the British organization is composed, for the most part, of district federations, which correspond roughly with the state organizations which make up the United Mine Workers of America, and in both countries there is of course equal voting representation of employers and employees in all the various boards of conciliation and scale committees. In Great Britain, however, the employers have perfected more formal organizations for carrying on their part in the negotiations than have those in America. In America there is no national organization of coal owners, and, if we except the Illinois Coal Operators' Association, no such well

organized state bodies as these of the British districts. Another point of difference that is noted is the fact that in Great Britain, when the boards of conciliation cannot come to agreement upon issues under discussion, provision is made to call in a disinterested outsider who as neutral chairman or umpire, after hearing the evidence, renders a decision which is binding upon both parties. In America the boards or scale committees themselves settle all questions that come before them for consideration. The parallelisms and differences in the various negotiating bodies in the iron and steel industries of the two countries are found to be much the same as those noted in the coal industries.

If we inquire what are some of the principles which have been asserted in the course of negotiations between employers and employees, we find that that of the minimum or living wage holds a prominent place. In the earlier years, in the British coal industry, miners' wages were for a long time determined by sliding scales, wages following selling prices. Obviously under this simple arrangement there was no limit below which wages could not go; and the coal owners in competition with each other frequently made long-time contracts for the sale of coal at lower and lower prices, knowing that with the sliding scale arrangement they could reimburse themselves through a corresponding depression in the cost of labor. With the establishment of the Federated Districts Board in 1894, however, a new plan was adopted which was to run for ten years. A minimum was established below which miners' wages were not to be depressed, and a maximum above which they could not be raised. Within these limits the board might determine the rate of wages for a given time, and it might make them depend upon prices, or it might take into consideration other factors as well. And as a matter of fact the miners themselves as well as their employers have for some time been taking account of other factors, such as the state of the market, the strength of the demand for mine labor, and the cost of production. The attempt in this plan is, within certain limits, to make the cost of labor a fixed charge on production; in other words, to make the selling prices follow wages rather than to let wages follow prices. Whatever may be said upon this question from a theoretical point of view, so far as the miners are concerned, as the author points out, they have come to regard the compact as an acceptance of their principle of a minimum or living wage. In the American coal industry this question has never presented itself in just this form, if we except the sliding scale features of the anthracite coal industry. Like the British miners the American soft-coal miners have insisted upon the principle that the cost of labor should be determined first, and set high

enough to afford a living wage, and that then prices should follow wages; but the minimum and maximum features have at no time been adopted.

In the British iron and steel industries, in contrast with the rule in the coal industry, general rates of wages with few exceptions are determined by the older type of sliding scales. Thus in the manufactured iron trade of the North of England and of the Midlands "wages are in a fixed ratio to the average net selling price, deduced according to recognized rules from the quantities and prices of the various descriptions of iron as ascertained by accountants every two months" (p. 146). It is interesting to note the reason why the sliding scale method is so generally in vogue in these branches of industry, while it has had to be abandoned in name and, as we have seen, greatly modified in practice in the coal-mining industry. The explanation, the author states, is probably to be found in two circumstances, first, the "long contract" system, which always endangered the sliding scale in the coal industry, does not exist at all in the iron and steel trades, owing to the fact that in these trades the great fluctuations in the price of raw material render long-time contracts too dangerous and speculative; secondly, "there is some reason to believe that combination among the employers has been more successful in 'regulating' prices in the iron than in the coal industry" (pp. 149, 150). In the American iron and steel industries, down to the strike of 1901, sliding scales much like those in the British industries obtained.

A very important fact brought out in the lectures is that strikes are much less frequent where the workmen are thoroughly organized, and also that the stability of the organizations in face of a falling market is increasing, numerous instances being cited of reductions in wages which have been advised by the boards and accepted peaceably by the unions.

The text closes with a lecture on The Legal Position of Trade Unions, in which the author discusses more particularly the legal revolution wrought in Great Britain by the Taff Vale decision, and the question of requiring trade unions formally to incorporate before entering into joint agreements.

Two slight errors in dates may be noted. On page 2 the year 1889 is given as the date when the United States surpassed Great Britain in the production of coal; this occurred in 1899. And on page 231 the great coal strike of 1897 is mentioned as of the year 1898.

Following the text are a number of appendices containing a bibliography and a most valuable collection of reprinted documents illustrative of the chief topics discussed in the lectures. The book is writ-

ten in Professor Ashley's characteristically critical and scholarly spirit, and the suggestions it offers, gained from English experience, will prove of great value to American readers and especially to American men of affairs in these days of industrial disturbances.

J. E. GEORGE.

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The Anthracite Coal Communities. By PETER ROBERTS. New York, The Macmillan Company, 1904. — xiii, 387 pp.

The Slav Invasion and the Mine Workers. By FRANK JULIAN WARNE. Philadelphia, the J. B. Lippincott Company, 1904. — 211 pp.

These two volumes together constitute a noteworthy sociological study of a phenomenon now to be witnessed on a larger scale in the United States than elsewhere in the world. The ethnic, social and moral character of a community inhabiting a region 1,700 square miles in extent, is being transformed by the immigration of peoples radically unlike those hitherto dwelling there. The outcome of the changes there taking place will be the answer to the question whether American manners, ideals and institutions have vitality enough to assimilate the Slavonic character as they have assimilated the Celtic and the Teutonic. Thus far in the evolution of the American people, the foreign elements absorbed have been chiefly of the same ethnic stocks that centuries ago combined to create the English blood. The immigration that we are now receiving is chiefly Italian and Slavonic. If we can convert these stocks also into good American stuff, the stability of our national character will be assured.

Dr. Warne's account of the Slav invasion is slight and not altogether satisfactory. His chief interest is in the labor situation, and the conflict that has been precipitated by the attempt of the English-speaking miners to hold their own against lower standards of living. It must be regretted that Dr. Warne accepts the local use of the word Slav as a comprehensive term for all non-English speaking elements in the anthracite mining districts. Ethnically, intellectually and sociologically the Italians and the Slavs are as unlike as the Italians and Welsh, and the writer of a scientific book is without excuse in condoning a misuse of terms that must inevitably lead to confused and mischievous thinking.

Dr. Roberts's volume is a model of detailed, comprehensive and well-ordered description. No other work that has ever been done in this

country in the field of descriptive sociology can be put in the same class with it. It is work of the same judicious, thorough-going quality, that we find in Booth's *Life and Labor of the People of London*.

Beginning with a general description of the territory in which anthracite miners live, Dr. Roberts leads up to an account of the immigration movement, and the resulting composite population, in which he distinguishes twenty-six different elements. Nowhere confusing the Slavonic with the Italian blood, he observes that wherever the Slavs have settled in the mining towns a complement of Russian and Polish Jews is invariably found. These Jews seldom work in the mines, but here as elsewhere they find their way into trade and rapidly accumulate wealth. Dr. Roberts says of them: "They raise large families, are tender fathers and faithful husbands. The males are rugged and well developed; the females strong and mothers of children." Of the 100,000 Slavs the Poles were the first to arrive and are the most numerous.

Dr. Roberts' general estimate of the Slavs may undoubtedly be taken as the judgment of a man who knows his facts and weighs his words. "As a factor in the operation of these collieries," he says, "the Slav is indispensable. His political importance is daily increasing, and if aided by means whereby his social worth may be enhanced, he is capable of taking his place in the ranks of more highly civilized immigrants to our country." He is obedient, courageous, capable of great physical endurance and industrious. Imitative to a high degree, he has absolute confidence in competent leadership. In school the Slav children excel the Anglo-Saxon children in penmanship, drawing, mathematics and discipline. The Slav is fatalistic and superstitious, but while he follows his priest in the ceremonies and rites of the church, he resents priestly interference in industrial affairs. His morality is altogether distinct from his religion. The Pole and the Ruthenian love freedom and are more self-assertive and more independent than the Hungarian and the Lithuanian. The Slav in general is unclean, suspicious, revengeful, brutal, ignorant and clannish. Of 150,000 illiterates in the anthracite district, the majority are Slavonic. The Slav has the instinct of acquisition and is rapidly buying real estate. He takes to American citizenship, but at the same time clings to old social customs, especially those pertaining to festivities, weddings and funerals.

All these phases of Slav life Dr. Roberts examines in detail in his chapters on family life, standards of living, education, intellectual and religious life, morality, economy, pauperism, criminality and politics. More space than we can give would be required for a detailed criticism

of these chapters. We are justified in saying that no American student of our economic, moral or political problems can neglect to make himself familiar with Dr. Roberts's pages.

FRANKLIN H. GIDDINGS.

Women in the Printing Trades. Edited by J. RAMSAY McDONALD, with a preface by Professor F. Y. EDGEWORTH. London, P. S. King, 1904. — 202 pp.

Women under the Factory Act. By NORA VYNNE and HELEN BLACKBURN. London, Williams & Norgate, 1903. — 205 pp.

Of *Women in the Printing Trades*, Professor Edgeworth says: "It seems to constitute a solid contribution to a department of political economy which has, perhaps, not received as much attention as it deserves." It is the sort of investigation which the American people fail to obtain from their numerous bureaus and departments of labor, an investigation which covers many different aspects of the industry under consideration, and reveals in every chapter a sustained effort to present every view of the subject which has been brought to light, whether or not the preconceived ideas of the editor may be strengthened thereby.

The investigation was "undertaken by the Women's Industrial Council, the Royal Statistical Society, the Royal Economic Society and the Hutchinson Trustees consenting to be represented on the committee responsible for the work." Of the individual investigators, Miss Clementina Black is perhaps the best known to American readers. The term printing trades has been used by the editor in a more comprehensive sense than we are accustomed to, including the manufacture of paper, paper boxes and bags as well as bookbinding.

The work is singularly devoid of generalizations except upon three points, namely, the unwillingness of the women in these trades to undertake responsibility, the absence of independent organization among them, and the consequent necessity for protective legislation in their interest. Thus, on page 91 the statement is made that "taken altogether, the evidence gathered by this investigation proves that neither the demand for improvement nor the organization to make that demand effective exists in the case of the women workers." This may be accounted for by the correlative fact brought out by the table of ages (p. 203), compiled from the census of 1901, which shows that the number of females employed in these trades in England and Wales between the ages of fifteen and twenty is nearly twice as great as at any other

age. The investigation appears to reveal a somewhat striking absence of married women from the printing trades.

In view of the absence of high-grade skill and training among women workers, indicated convincingly in a short and admirably written chapter, and in view of their youth and incapacity for organization, great importance attaches to the protection afforded the rank and file by the factory acts, which were applied to these trades as long ago as 1867, were amended from time to time, and finally embodied in the Factory and Workshops Act of 1901. The chapter devoted to this subject is the longest, and one of the most interesting and valuable in the book. It gives a brief summary of the law and then deals with the "Economic and Industrial Effects of Legislation." The rigid restriction of the hours of labor of women appears in a few cases to have hastened the introduction of machines for folding. Night work has been much reduced and

the influence of restriction has been shown in the following directions: (1) An increase in the class of workers called "job-hands"; (2) an enlargement of the permanent staff; (3) a rearrangement of the employment of male and female labor.

The third of these changes is practically imperceptible, while the second has affected women most beneficially. This involves the erection of more expensive premises, and can only be adopted by firms whose financial position enables them to meet considerable outlay. It is probably the best means of assuring that work shall be done most efficiently for the employer and under the most favorable conditions for the employed.

American readers, acquainted with the lax enforcement of factory legislation in this country, may read with interest not unmixed with envy the following closing sentence of this instructive chapter:

The efficiency of modern factory industry depends very greatly upon automatic working — upon its standardisation of conditions, and the existing factory law with its inelastic provisions is, in reality, a great aid in maintaining those conditions of efficiency. Now and again an employer complains of some hard experience, and forgets that a departure from rigid rule would destroy the certainty which he feels that the law is treating him exactly as it is his competitors. Such feeling of security is essential to business enterprise.

The second volume under review is of great practical utility because it makes accessible, in compact form and intelligible phraseology, the provisions affecting women of the consolidated industrial law of Great Britain and Ireland as they are now actually in force since the amendments of 1901.

The characteristic features of the law as here set forth appear to be two: the comprehensive nature of the interference with adult workers, and the wide range of discretion entrusted to the secretary of state, who may suspend or extend provisions in a manner unknown to American legislation in this field. The comprehensive nature of the law is especially noteworthy in relation to the hours of labor. Thus, in textile factories no woman may be employed continuously for more than four and one-half hours without an interval for a meal; and the day must begin at 6 A.M. and end at 6 P.M., or begin at 7 A.M. and end at 7 P.M., except on Saturday. It is illegal to begin at the half hour. In the twelve-hour day at least two hours must be given for meals, of which one must be given before three o'clock in the afternoon.

In non-textile factories the hours are prescribed with equal definiteness, though they differ somewhat from the foregoing. Where no children or young people are employed, the hours may be still different, and in bleacheries and dye-works a fourth arrangement of hours is permitted. Finally, the meal times must be simultaneous for all the women in any given factory.

All these provisions may, however, be greatly modified by the secretary of state, provided that he is satisfied upon two points, namely, that exceptions are necessary owing to custom or the special demands made by the trade either as a whole or in a particular locality; and that such exceptions will not injure the workers.

Evidently the principle underlying the regulation of working hours of adults in England is the opposite of that which is followed in many American states, notably in Illinois. The English practice adapts the restriction to the trade. The American courts tend to hold all such wise adaptation to be class legislation, and therefore unconstitutional.

While the English restrictions upon the working day of women are far more extensive and enlightened than any which have been adopted in this country outside of Utah, where the eight-hour day is prescribed for all employes in mines, factories and smelters, the provisions dealing with home work are surprisingly inadequate from the point of view of the public health and of the welfare of the home workers. The act gives the factory inspector no power to enter the home, or to take any steps whatever with regard to it. The Englishman's house is still his castle, even though he turn his one room into a workshop by taking in goods to make into garments for the market. The penalty for sending goods to infected premises is rather surprising. If they are sent "knowingly or through culpable carelessness" and there is smallpox or scarlet fever present, the fine is ten pounds; if the owner of the goods did not

know, and could not reasonably be expected to know of the presence of disease, there is no penalty. The regulation of home work is evidently in an extremely tentative stage in England; and is regarded as chiefly the duty of the sanitary authorities, although the number and variety of occupations carried on in homes is large and appears to be increasing.

While the marked bias of the compilers against all provisions applying to women only and not to men deprives the work of any claim to scientific value, this bias is so frankly avowed that the reader is enabled to make due allowance for it. Altogether the book is both suggestive and instructive.

FLORENCE KELLEY.

NEW YORK CITY.

Elements of Political Economy. By JAMES BONAR. London, John Murray, 1903. — 207 pp.

In the little manual which he has contributed to Murray's new series of secondary education text-books, Dr. Bonar reveals all the qualities of vigorous thought, independent judgment and felicitous statement that distinguish his more elaborate writings. Perhaps no request comes to the professional economist so often as a demand for a book which will enable a man of ordinary intelligence but untrained in the lingo of the elect, to acquaint himself with the elementary principles at the root of the commercial and industrial "problems" that periodically disturb the business world. Certainly in few directions is it so difficult to render helpful service. Of comprehensive treatises pitched in technical key, or of crass manuals reminiscent of Mrs. Marcet's *Conversations* and Miss Martineau's *Illustrations*, there is no dearth. But the serviceable hand-book, explicit enough to command the respect of busy men and readable enough to hold their attention, is painfully lacking.

In this last direction lies the prime usefulness of Dr. Bonar's *Elements*. It appears at a peculiarly opportune moment, and the welcome accorded the volume suggests an even larger educational service than that primarily contemplated.

Of the ten chapters that make up the book as originally issued, the first five (dealing respectively with introductory matters, value, capital, wages and rent, and profits and income) acquaint the reader with the general outlines of economic theory. It is necessarily a bird's eye view, but the sweep is comprehensive and the groupings symmetrical. We are in touch with a careful observer of actual economic phenomena,

while virile concepts and fluent style afford refreshing contrast to the flat aridity of the ordinary economic text-book.

These qualities are, if anything, more prominent in the second half of the volume dealing with currency, trade, finance and social reform. The passing from theme to theme is logical and easy, and there is no lack of positive color and content.

It is however in the supplementary chapter on "Interference with Foreign Trade" issued, in consequence of the extraordinary interest in commercial policy, as an appendix to the first edition and to appear hereafter as an integral part of the volume, that Dr. Bonar is at his best. Forceful statement here becomes eloquent expression and nice phrasing passes into such quotable epigrams as "Protection like perversion or orthodoxy is a fallacy in one word which begs the question," or "The claim for protection is everywhere a claim either of weakness addressed to a strong Government, or of interested strength only too capable of controlling a weak Government."

It may be that such vigor does not make for academic calm; but certainly in the whole mass of pamphlet literature that the fiscal controversy in England has brought upon us, there is nothing which in refreshing definiteness and in terse sanity compares with that which Dr. Bonar has written.

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History of Coinage and Currency in the United States, and the Perennial Contest for Sound Money. By A. BARTON HEPBURN. New York, The Macmillan Company, 1903. —xx, 666 pp.

This book satisfactorily fulfils the intention of the author as laid down in the preface. It is designed as a "work of convenient size and popular character, covering the history of coinage and currency of the United States with data and details in chronological order, available as a book of reference." Possibly the work has not all the earmarks of popularity, but it is certainly convenient, orderly in arrangement and precise.

The field of this book is a familiar one, but in spite of all that has been written, I recall no single work which brings together in one volume the essential legislative facts regarding all the different kinds of money known to American experience. For the period preceding the Civil War, there are three chapters on the currency system; two on colonial currency and the Federal Bank, and two on state banking; for the period from 1861 to 1890, four chapters on legal tender notes, two

on the silver question, and three on the national banking system; for the period since 1890, one chapter on the silver contest of 1896, and one on the reform act of 1900. The work concludes with a general review, a descriptive and serviceable bibliography of a dozen pages and an appendix of two hundred pages. In this are reprinted extracts from the principal laws relating to coinage and money; Jefferson's notes on a coinage system; Hamilton's report on the mint; Jefferson's letter of approval; and Hamilton's report on a national bank. The index is analytical and detailed; and in addition there are marginal titles throughout the volume which aid the reader who is looking for some special point. All in all the work is a helpful tool to the student.

The usefulness of the volume is strengthened by concise and intelligible statistical tables appended to the several chapters, which have been either prepared or verified by Mr. M. L. Muhleman, a most competent authority. These are naturally based upon official data, such as the reports of the secretary of the treasury and of the comptroller of the currency. Presumably they have been independently compiled, for the tables on state banking differ materially from those published in the *Monthly Summary of Commerce and Finance* of July, 1898. The author accepts the term "banking power" which has been recently used by the comptroller of the currency in his annual reports and is borrowed, I believe, from Mulhall. The term is an interesting one, but should be used with care. Is it proper to include both capital and circulation among the several elements which go to make up the total, if circulation depends upon bonds which must be purchased out of the capital? And if deposits in trust companies are redeposited in national banks, should both be included in a statistical measurement of credit?

Mr. Hepburn has had a practical experience in banking affairs which gives weight to his exposition. As superintendent of banks in New York, and as comptroller of the currency from 1892 to 1893, years which tried the banks and gave rise to the greatest variety of currency schemes, he has been forced to a careful consideration of monetary history. Although he presents his data with fairness, he does not neglect to voice his own convictions. He wishes to assure "stability as to metallic money, security and flexibility as to paper currency, to the end that prices may not be subject to ruthless disturbances and interest rates be reasonably uniform and equitable throughout the land." This is a heavy burden to place upon the money medium, and if this goal is the ideal without which currency is in some degree unsound, it may well be feared that the contest will remain perpetual.

Mr. Hepburn believes in the act of 1900. It is not probable that except under extraordinary conditions the gold standard has anything to fear from the present amount of silver currency. The situation is vividly summarized: "Silver is laid under contribution to perform the daily exchanges of the workaday world and cannot leave its task either directly or indirectly to aid in withdrawing gold out of the treasury. It is chained to the wheels of industry." Mr. Hepburn believes that the sub-treasury system has worked mischief; he finds good in the old United States banks but admits that the establishment of a central bank at the present time would not be desirable. Federation and not centralization is the true line of reform. Under the circumstances the most practical remedy is to permit the secretary of the treasury to deposit all bonds over and above the reserve maintained against legal tender obligations and ordinary checking balances, in the banks of reserve cities. In the elasticity provided by the emergency circulation of Germany and the safety fund in the Canadian system, he finds much to approve.

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Cartells et Trusts. Par ÉT MARTIN SAINT-LÉON. Bibliothèque d'économie sociale. Collection publiée sous la direction de M. Henri Joly, vice-président de la société d'économie sociale. Paris, Victor Lecoffre, 1903. — viii, 248 pp.

This remarkably clear exposition is a concrete elaboration of the author's main thesis that industrial history shows a perpetual oscillation between the two poles of liberty and restriction, but that history is never a mere resurrection of the past and the process of evolution will discover and work out truth and social advantage midway between the two extremes.

The cartell or pool is characteristic of continental Europe, the trust of the United States and England. The author appears to think that this is due, not so much to the higher economic development of the Anglo-Saxon countries as to the extreme individualism encouraged by their laws.

In Germany the courts have gone so far as to enforce contracts between the selling-syndicates and their individual members; and it is only since the recent industrial depression in that country that there has been any popular clamor against these numerous and powerful associations. In Prussia the state itself is a member of the *Kali-Kar-*

tell and exercises effective control over output and prices. In Austria the cartells have been more oppressive and unpopular than in Germany, and at the same time less permanent.

In France, article 419 of the penal code appears to forbid all combinations in restraint of trade, but hitherto it has not been rigidly enforced, largely because of the moderation of the industrial syndicates. In case of need the courts would, no doubt, give a more severe interpretation, and the law is, therefore, of considerable potential value.

Some organization of producers is absolutely necessary, and it is neither possible nor desirable to suppress the cartells. As a rule they have been socially beneficial, but at times their methods have been questionable and oppressive. During the recent industrial depression in Germany the coal syndicates insisted on maintaining prices to the disadvantage of the manufacturing interests. Similarly, the sugar cartells habitually maintain prices in the home markets, while supplying the British consumer at very low prices. This effect will be largely prevented if the various countries abolish the bounty system, in accordance with the resolutions of the Brussels Conference.

The account given by the author of cartells in European countries is in part a compilation of the information contained in the United States special consular report on *Trusts and Trade Combinations in Europe*; but all the other leading sources have been consulted, as is shown by the excellent bibliographies cited and the frequent foot-notes.

M. Saint-Léon's discussion of the American trust shows a remarkable familiarity with recent economic and political thought in the United States. The financial organization of the trust, in its various forms, is briefly and lucidly explained. The trust is, perhaps, the outcome of the American idea of scientifically organized production, but it is to some extent the work of shrewd promoters who have transferred to the investing and speculating public enormous quantities of watered stock. Over-capitalization, the author asserts, is "the most characteristic feature of the trust," and he goes so far as to say, in curiously cis-Atlantic French — "*pas de watering, pas de trust.*" He quotes with high approval the investigations of Professor Jenks concerning the influence of trusts upon prices, and gives other authority to confirm the view that both trusts and cartells frequently exercise monopoly power by controlling prices and increasing the producer's margin of profit. It is also clear, he thinks, that trusts are fostered by a protective tariff.

The power of trusts in the United States, the author believes, is largely due to the nature of the federal Constitution, under which ef-

fective control is difficult or impossible. The situation demands federal control, and it may be necessary to secure an amendment to the Constitution with this end in view. In the first place, there should be a national corporation law, with provision for reasonable publicity and accountability. Secondly, the weapon of tariff reform should be held in reserve. Discrimination in railway rates should also be prevented, and some limitation of the power of the Standard Oil Company could be secured by control of transportation by pipe lines.

M. Saint-Léon favors the cartell rather than the trust. Monopoly, he says is not the necessary end of the cartell. It preserves the independence of its members, there is no undue inflation of capital, and the benefits of organized production are usually secured by a conservative and moderate policy. Monopoly, on the other hand, is an anti-social phenomenon — the exploitation of the weak by the strong.

Wherever the trust is found [the author says] it tends to a régime of industrial tyranny, which, while enriching the few beyond all reasonable limits, is prejudicial to the general welfare.

With regard to both forms of industrial combination we have two extreme theories: on the one hand glorification of the trust as the necessary product of economic evolution, on the other indiscriminate denunciation of the slightest tendency toward monopoly. Economic truth lies midway between these two extremes. We must seek for a principle of reconciliation between the interests of industry and those of society at large. This principle is necessarily contingent, varying with changes of place and time. It nevertheless exists and cannot long be hidden from conscientious investigation. Economic preëminence will belong to the nation that shall discover this principle and take it as the rule of her industrial politics.

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BOOK NOTES.

In July, 1903, the governor of Massachusetts appointed, at the instance of the state legislature, a committee on the relations between employer and employee, which included among its members such men as the Hon. Carroll D. Wright and Professor Davis R. Dewey. Its report, published in a pamphlet of 118 pages, presents a valuable review of the questions which arise between employer and employee and which call for legislative interference. Such topics as profit sharing, arbitration, the attachment and assignment of wages, the regulation of the hours and conditions of labor, employers' liability and the use of the injunction in labor disputes, are discussed and amendments to the present Massachusetts laws suggested. The recommendations of the committee are favorable to a further restriction of the hours of labor of women and children; to continued reliance on purely voluntary arbitration, supplemented, however, by compulsory investigation through the state board of arbitration for the settlement of labor disputes; to the discontinuance of "omnibus" injunctions, and provision that punishment for crime shall take into account any punishment for contempt of court that may have been imposed in connection with the commission of the crime; and a workmen's compensation act similar to that adopted by Great Britain in 1897. These recommendations are reinforced by cogent arguments and by appendices giving the laws of other countries. If followed up by the state legislature, the work of this committee should serve to confirm to Massachusetts its well-earned title of leader in the field of labor legislation in the United States.

The Economic Seminary of Johns Hopkins University has compiled and published under the direction of Dr. George E. Barnett, a *Trial Bibliography of American Trade-Union Publications* (Baltimore, The Johns Hopkins Press, 1904; pp. 117). All of the documents referred to are to be found either in the Johns Hopkins University Library, the John Crerar Library at Chicago, the Library of Congress, or the Library of the United States Department of Labor at Washington, or at the central offices of the unions themselves, and letters are used to indicate the source of each particular title. The bibliography refers to more than one hundred different unions and includes, in addition to their periodical publications, references to their constitutions of different dates, to the proceedings of their congresses and conventions, and

to printed agreements between employers and employees. Students of the labor problem owe a debt of gratitude to Dr. Barnett and his associates for this valuable aid to the discovery of such an elusive body of literature as that published by American trade unions.

It would be much to expect that a body of foreigners, in a hasty trip through the United States, should in the intervals of dinners and sightseeing manage to gain a very profound insight into the conditions of labor and industry here. Nevertheless, there is much that is of general interest to American readers in the *Reports of the Mosely Industrial Commission* (London, Cassell & Company, Ltd., 1903; 279 pp.). As American industry is rapidly advancing toward a state in which the foreign market will be of vital importance, it is interesting to us to know how our labor force compares in skill and efficiency with that of our chief foreign competitor, and whether our social and industrial organization is to prove a handicap or an aid to us. On matters of this kind, the *Report* offers numerous valuable suggestions, and our only regret is that it could not have been made more thoroughgoing than the limited time allotted to the investigation permitted.

The *Office International du Travail* has recently added to its useful publications, monographs under the editorship of Professor Étienne Bauer of Basle (Jena, Gustav Fischer, 1903), upon the *Night Employment of Women in Industry* and upon *Dangerous Trades*. The former contains an exhaustive account of the restrictions on the night employment of women in the leading countries of the world. These accounts are written by specialists in the respective countries and may confidently be accepted as accurate. In addition to editing the volume, Professor Bauer adds greatly to its value by contributing a fifty-page introduction, tracing the history of restrictions on the night employment of women and comparing the present laws of different lands. The monograph on *Dangerous Trades* refers especially to the match and white lead industries. It also is a collection of essays by specialists on the different phases of the subject as they appear in different countries. Professor Bauer contributes a helpful historical introduction also to this monograph.

About two years ago a series of letters appeared in the London *Times* ascribing the industrial troubles to the excesses of trades unions. These articles, which created quite a stir, have now been reprinted in book form by their author, Edwin A. Pratt, under the title, *Trade Unionism and British Industry* (New York, Dutton). As a one-sided presentation of the case, there is no doubt that the essays contain a vigorous and apparently justifiable indictment of union methods. For the stu-

dent, however, the book must be supplemented by the replies of Mr. and Mrs. Sidney Webb and others.

Anyone who wishes to know all there is to know about the business operations of the modern commercial bank may gratify his desire by reading Professor A. K. Fiske's *The Modern Bank* (New York, D. Appleton & Co., 1904; 348 pp.). No detail of business practice is sufficiently trivial to escape Professor Fiske's notice. As a consequence the book is invaluable to those who expect to enter the banking business, and very useful to the theoretical student of banking; and as a further consequence, it is unspeakably dull reading. The text is illustrated by numerous well selected and well executed cuts of various forms of business documents.

The second edition of M. Aug. Arnauné's well-known work, *La Monnaie le crédit et le change* (Paris, Félix Alcan, 1902; 431 pp.), deserves a place of honor in every library of monetary literature. It is surpassingly clear, and it covers very satisfactorily all that part of the field in which a general consensus of opinion has been reached. Controversial material has been for the most part excluded; hence the specialist will search in vain for new light on disputed points. This fault, however, — if it may be regarded as such — does not impair the value of the work as an introduction to monetary science.

The probability that Mexico and China will follow India in adopting some plan by which stability will be given to the rate of exchange between their silver currencies and the gold standard of the rest of the commercial world, lends special interest to Dr. Otto Heyn's monograph on *Die Indische Währungsreform* (Berlin, J. Guttentag, 1903; pp. 375). In addition to a very full account of the reform itself and of the circumstances that led to its introduction, the monograph discusses at length the economic importance of the reform for India (chapter iv) and its importance for Europe (chapter vii). Dr. Heyn furnishes abundant proof of the advantages which both India and Europe have derived from this change, and a study of his chapters is well calculated to encourage those who advocate a similar reform for Mexico and China.

The student of American railway economics owes a debt of gratitude to Mr. G. G. Tunell for an admirable study of railway rates and service in *Railway Mail Service* (Chicago, 1901). The first chapter is a reprint of a statement submitted to the Joint Congressional Commission on postal affairs by the vice-president of the Chicago and Northwestern railway. The authorship of this concise summary was not at that time established. The remaining portion of the book consists of

reprints of three articles published in 1899 in the *Journal of Political Economy*. The entire collection is undoubtedly the most convenient summary of the question available. The development of the problem has also been treated suggestively by Dr. Tunell in a pamphlet reprint outlining the development of the railway mail service — a lecture delivered at the University of Chicago in 1902. This excellent work of Dr. Tunell's in connection with the voluminous reports of the Joint Congressional Commission constitutes an important contribution to the economic history of the United States.

The schools of commerce in various universities are beginning to show some fruits of their labors in the shape of collections of addresses by men of affairs. Two such volumes lie before us, the *Lectures on Commerce*, delivered at the College of Commerce of the University of Chicago (University of Chicago Press), and *British Industries* (Longmans), delivered to students in the Faculty of Commerce in the University of Birmingham. The American volume is edited by Professor Hatfield, the English by Professor Ashley, who also furnishes an introduction. In the American volume, however, Professor Laughlin gives the introductory address. The lectures in both works are by experts in their respective fields. The American work is about equally divided into three parts, treating respectively of railways, trade and industry and banking and insurance. The industrial part includes talks on the steel industry, the art of forging, advertising, wholesale trade and the credit department. The English work goes somewhat more fully into the various industries like iron and steel, cotton, woollen and worsted, linen and flax; but also comprises a chapter on railways and shipping, and on the trust movement. On the whole, the American volume is the more varied, the breezier, and the more interesting; the English one the more solid, the more instructive, and of greater permanent value.

Combinations of farmers for the purpose of controlling the prices of their products seem to the American student of economics foredoomed to failure. Limitation of production, upon which effective price control obviously depends, is hardly conceivable when producers are so numerous that each feels that a slight increase or decrease in his own operations can affect the whole in only an infinitesimal degree. Nevertheless, agricultural cartells have been formed in Germany, and have attained at least a limited measure of success, and an unlimited measure of unpopularity. A sympathetic account of these cartells will be found in A. Souchon's *Les Cartells de l'agriculture en Allemagne* (Paris, Librairie Armand Colin, 1903; 351 pp.).

To the lay mind, statistics of exports and imports seem even more mendacious than ordinary statistics. It is decidedly annoying to find that the American figures for exports to England seem to be quite independent of the English figures for imports from America; and though this fact may in part be traced to its cause in differences of bookkeeping, other difficulties not less vexatious are constantly arising. Dr. Gustav Lippert in his monograph *Über die Vergleichbarkeit der Werte von internationalen Waren-Übertragungen* (Wien und Leipzig, Wilhelm Braumüller, 1903; 188 pp.), attempts to show that in spite of appearances, most of the discrepancies in valuation may be explained away. While it can not be said that Dr. Lippert has cleared up the subject completely, nevertheless his work is of distinct value to the student of commercial statistics.

The present controversy in Great Britain makes especially timely the appearance of *Free Trade and other Fundamental Doctrines* of the Manchester School edited and with an introduction by Mr. Francis W. Hearst (Harpers). The book of over 500 pages contains the most important speeches and essays of Cobden, Bright, Hume, Fox and their leading followers. The five divisions treat respectively of England, Ireland and America; the Corn Laws and Free Trade; Wars and Armaments; Colonial and Fiscal Policy, and Social Reform. It will be found a convenient handbook of information.

An important contribution to the literature of Chamberlainism is Mr. J. W. Root's *Trade Relations of the British Empire* (Liverpool, J. W. Root, 1903; 431 pp.). Mr. Root begins with a very intelligent discussion of the geographic and economic conditions prerequisite to a satisfactory customs union, and concludes that the British Empire does not present such conditions. Then he enters upon a statistical analysis of the trade of Great Britain with her chief colonies and attempts to indicate the possibility of radical changes under a system of preferential duties. A careful comparison is drawn between the foreign and the colonial trade, and the point is made that the former is so essential to British welfare that it is dangerous to place impediments in its way. While not a dogmatic free trader, Mr. Root is very decided in his view that Mr. Chamberlain's plan promises ill for both the colonies and the mother country.

A modest contribution to the literature on the same subject is M. Georges Blondel's *La Politique protectioniste en Angleterre* (Paris, Victor Lecoffre, 1904; xv, 161 pp.). Two-thirds of the essay is devoted to a statement of Mr. Chamberlain's position, with the arguments of his supporters and opponents. In the opinion of M. Blondel, the

policy will in the end be injurious to England; he believes, nevertheless, that the chances favor its adoption. In the last third of the essay M. Blondel discusses the probable effect upon France of the adoption of a protectionist policy by England. France is certain to be injured by such a change in British commercial policy. Retaliation being out of the question, France can seek to reinvigorate her industrial life only through a radical change in the educational system and through the adoption of forms of industrial organization similar to those of Germany.

Another essay by the same author merits at least a cursory examination. This essay, entitled *La France et le marché du monde* (Paris, L. Larose, 1901; 164 pp.), contrasts the position of France with that of her chief competitors, and attempts to account for the relative decline of France in commerce and industry. M. Blondel regards the low birth-rate as the principal cause of the loss of national prestige in economics as in politics. What France lacks most is competent leadership; and the small family is not likely to furnish men possessed of self-reliance and initiative. Other important causes mentioned are the lack of adequate transportation facilities, incapacity for organization (misnamed "individualism" by the author) and an unpractical system of education and unpractical social ideals.

Professor Karl Kaerger's *Landwirtschaft und Kolonisation im spanischen Amerika* (Leipzig, Duncker & Humblot, 1901; 2 vols., 939, 743 pp.), offers a vast mass of information on the agricultural resources of South America. Dr. Kaerger was agricultural expert with the German legation at Buenos Aires, and consequently had excellent opportunity for observation of South American methods of production. A careful perusal of this work will strengthen the belief that if ever Argentina succeeds in securing a good supply of efficient labor, she will become a most formidable competitor in the wheat and livestock markets of the world.

By a curious coincidence two books on the economics of wheat with almost the same title, and yet written in an entirely different way, have recently been published simultaneously in France and the United States. The French work, by Edouard Huet, is entitled *Le Grain de blé, d'où vient-il, où va-t-il*, (Paris, Guillaumin). The American work, by William C. Edgar, is called *The Story of a Grain of Wheat* (Appletons). M. Huet's book discusses in the first part the cultivation of wheat, and takes up in a second part, the French legislation in its relations to wheat culture and wheat trade. Mr. Edgar's book is more popularly written, and contains a somewhat wider survey of facts from

an international point of view although especially interesting for its clear account of American methods of production and transportation. Each work will usefully supplement the other.

The third volume of the *Handbuch der Wirtschaftskunde Deutschlands* (Leipzig, Teubner, 1904; xii, 1047 pp.) gives a succinct account of fifty-one of the principal industries of Germany. In the case of each industry, a sketch is given of recent development, technical and economic, and in many instances illuminating suggestions are made respecting probable future movements of the industry. The prevailing technical processes are carefully described, and estimates are given of the extent of the industry. Many pages are devoted to market conditions, and the causes of the prosperity or the decline of the several industries. The work will be of great value to American students who seek to obtain an intelligent view of the resources and potentialities of America's most formidable competitor in the world market.

In his *Gold Bricks of Speculation* (Chicago, Lincoln Book Concern, 1904) Mr. John Hill, Jr., member of the Chicago Board of Trade, very laudably endeavors to acquaint the public with the devices and villainies of those most audacious and slippery scoundrels, the operators of bucket-shops. Mr. Hill, in behalf of the Board of Trade, engaged in a vigorous warfare to put a stop to the swindling operations of the bucket-shops, against which he bears a grudge, since not only do they plunder their victims but they also bring legitimate speculation into disrepute, and tend to depress prices of agricultural products through the diversion of capital that would otherwise find an outlet in *bona fide* transactions. The latter part of the volume is devoted to a defense of legitimate exchanges and an explanation of their methods. The book is written in a breezy style, and should appeal to a wide circle of readers, of whom all will be enlightened by it and some may be preserved from the pitfalls of the form of gambling against which it is directed.

There is no surer indication of the increasing interest taken in economics than the multiplication of text-books that is now in progress. Professor Flux's *Economic Principles: An Introductory Study* (London, Methuen & Company, 1904; 324 pp.) is a work true to the best traditions of English economics. The topics treated in his eighteen chapters — value, distribution, money, international trade and its regulation and taxation — are those to which English economists since Adam Smith have devoted greatest attention. Like the English masters, too, in discussing these topics, the author has a marked predilection for the *a priori* method. While the scope and method of his

work are thus reminiscent of a book like Ricardo's *Principles*, its contents show thorough familiarity with the best contemporary thought. In the chapters on distribution, the influence not only of Marshall, to whom the author acknowledges special indebtedness, but also of Clark and Böhm-Bawerk, is clearly evident. But here as throughout, the author has not so much appropriated as assimilated the contributions of others. His treatment is distinctly his own and all the better because judiciously articulated with the work of other economists. The book, as the title indicates, is introductory rather than elementary. It seems intended for mature students entering on a graded course in economics, and should prove well adapted for this purpose.

Among recent text-books on economics none is written in a more interesting style or shows a deeper sympathy with the social movements of the day than that of the French economist, Professor Charles Gide. The second American edition of this work, *Principles of Political Economy* (Boston, D. C. Heath & Co., 1904; pp. 705), translated and edited by Professor C. William A. Veditz of Bates College is a distinct improvement over the first. Not only has the editor substituted copious American notes and illustrations for those of the French original, but he has added whole new sections (e.g. on the tariff history of the United States, on American banking experience, etc.) and expanded considerably chapters in the books on Distribution and Consumption. Except as regards the labor and the monopoly problems, the work is now thoroughly modern and up-to-date. It may be recommended to teachers who prefer an encyclopædic treatment of economics to a text in which the theoretic leaning of the author is a prominent feature.

Professors Ely and Wicker are the joint authors of an *Elementary Principles of Economics* (New York, The Macmillan Company, 1904; pp. 388), which compares favorably with other text-books adapted to the needs of students in the secondary schools. The material which it contains is drawn for the most part from Professor Ely's larger *Outlines of Economics*, but in the order of its presentation, the proportionate space allotted to different topics, and the simplicity and clearness of its style, the new work is decidedly superior. It should serve to lighten somewhat the burden now imposed upon teachers of economics in the commercial high schools of the country.

Professor Schmoller has reprinted his well-known work, *Über einige Grundfragen der Sozialpolitik und der Volkswirtschaftslehre* (Leipzig, Duncker und Humblot, 1904; 393 pp.). Along with the three essays reprinted in the first edition, he has included his valuable paper on "Die Gerechtigkeit in der Volkswirtschaft," first published in 1881.

The two leading Italian economists have enriched the permanent literature of the science by collecting in book form a number of essays written during the past quarter of a century. Professor Loria's book is entitled *Verso La Giustizia Sociale* (Milano, Societa Editrice Libreria), a portly volume of almost 600 pages, divided into three parts, containing respectively his critical, his economic and his sociological essays. Professor Pantaleoni's book is entitled *Scritti Varii de Economia* (Milano, Reino Sandron). It includes essays on finance, on economic psychology, and on the history of economic theory. These volumes will be welcomed by the many admirers of the distinguished Italians, some of whose works are familiar to American readers through translations.

The well known work by Noyes on *American Socialism* was published about thirty-five years ago. It is eighteen years since Professor Ely again treated the subject in his *Labor Movement*. In view of the fact that the last two decades have witnessed so great a development of socialism, the time had obviously come for an attempt to bring the treatment down to date. Mr. Morris Hilquit, a New York socialist, has endeavored to do this under the title, *History of Socialism in the United States* (Funk & Wagnalls Co.). The first part, entitled *Early socialism*, adds practically nothing to our knowledge. In the account of the modern movement, however, the chapter on the ante-bellum period gives an interesting sketch of the German socialists. After a rather slight presentation of the period of organization, which is declared to have lasted to the middle of the 70's, the work deals primarily with the socialistic labor party and present day socialism. The author has eschewed all scientific apparatus, such as notes and references, allusions to sources, so that the usefulness of the book to the serious student will be comparatively small. As a running comment, however, on recent socialism, written largely from the inside, the work will have its undoubted place.

A stupendous work has recently been undertaken under the auspices of the International Institute of Bibliography. This is nothing less than an annual classified list of all publications in economics. The first volume containing the works for the year 1902 has appeared under the name of *Bibliographia Economica Universalis*. The title page states that it is published by Professor Mandello of the faculty of law at Pozsony and edited by Ervin Szabo, librarian of the chamber of commerce of Buda-Pesth. It contains 170 pages, printed, however, only on one side of the leaf, which makes it very convenient for annotations and additions. The economic bibliography is the tenth in the

regular series of bibliographies published by the Institute. The present volume does not include the Scandinavian, Spanish or Dutch literature, although it contains Hungarian titles, due to the fact that the work originally appeared in a Hungarian review. The editor promises, however, to add the missing countries from year to year, in which case the work will not belie its title.

We have to record three additions to the literature of the history of economic theory. Dr. Carl Ilgner portrays in a volume of almost 300 pages the mediæval economic doctrines as contained in the works of Antony of Florence, who wrote at the beginning of the fifteenth century. During the past decade, attention has repeatedly been called to the fact that the archbishop's theological works contain some very interesting passages on the theory of value, and the concept of capital, as well as on the practical questions of the day. It has been reserved, however, for Dr. Ilgner to make a detailed and, on the whole, adequate study of the subject under the title of *Die volkswirtschaftlichen Anschauungen Antonins von Florenz* (Paderborn, Ferdinand Schöning).

A more familiar topic has been treated by Dr. Edouard Dessein, in his book, entitled *Galiani et la question de la monnaie au xviiiè siècle* (Langres, Imprimerie Champenoise). M. Dessein calls especial attention to the importance attached by Galiani to the subjective side of the theory of utility and value.

An interesting and novel monograph is that by Professor Souvaine-Jourdan, entitled *Isaac de Bacalan, et les idées libre-échangistes en France vers le milieu du dix-huitième siècle* (Paris, Larose). M. Souvaine-Jourdan discovered in the Bordeaux library a manuscript of philosophical reflections on free trade which Bacalan wrote in 1764. This is now published in full, with a long introduction and some notes. In the admirable introduction, which also contains a life of Bacalan, M. Souvaine-Jourdan points out in detail the three sources of the free-trade theory in France. First came Argenson, with his *a priori, laissez-faire* views, afterwards systematized by the Physiocrats; secondly, came the agricultural influence, which was then as strongly in favor of free trade as it is to-day protectionist. Thirdly, came what might be called the scientific view of economics, due probably to the translation of Hume. Bacalan must be considered as perhaps the most important representative of this third class. The monograph is a distinct contribution to the history of economics.

The title of Miss Frances A. Kellor's *Experimental Sociology* (New York, The Macmillan Co., 1902) gives a wrong idea of the contents of the book. In accordance with the author's own definitions and ex-

planations it should be called "Criminal Sociology." It is an observational study of crime, and is experimental only in so far as it is limited and inconclusive. It records a first-hand physical, psychical and sociological examination of 55 white female students, 60 white female criminals and 90 negro criminals, undertaken for a synthetic study of the causes of crime. Through the omission of tables and charts the author has so far condensed her material as to render her schedules unilluminating in themselves; and in her anxiety to withhold her own theories, she has failed to interpret her materials. The latter part of the book embodies a discussion of the influence upon crime of climate and education, and touches upon the increase of criminality among women. In this part of the book we find a valuable report upon the provisions made for the discipline of the criminal in the Eastern states. In her portrayal of existing conditions, the author reveals at once discrimination and judgment. It is when she approaches the constructive in criticism that she shows weakness and incapacity. Notwithstanding the partial failure of her efforts, Miss Kellor deserves commendation for enterprise and energy. Her research among criminals has been indefatigable, and her faithful persistence in the face of disheartening opposition merits admiration.

In an age of rapid social and political evolution, much writing on "problems" is inevitable, and the "leading reviews" can be trusted to fill their pages with solutions made out of hand by untrained "thinkers" whose clever journalistic style is worth more in dollars and cents to publishers than the conscientious reflections of disciplined students. Sociological quackery is only less profitable than medical quackery in money and in notoriety. There is this difference however: the sociological quack is often a sincere person. We suspect that Mr. H. G. Wells, the author of *Mankind in the Making* (New York, Charles Scribner's Sons, 1904), takes himself seriously, and it is possible that some of his readers also may take him seriously. His book is a plea for babies, and "lots of them," and a discussion of educational influences. It has all appeared in periodicals, and has received much attention from the reviewers. It is enough to say of it that in the most distressing way it mixes up a great deal of good sense and sharp criticism of fads and follies, with variegated vagaries and abundant misinformation.

Félix Alcan publishes a work which will prove of interest to the student of sociology, *L'Idée d'évolution dans la nature et dans l'histoire* (Paris, 1903; 406 pp.) by Gaston Richard, whose writings on social science are already well known. In this, as in his other works,

while M. Richard displays little originality or profundity of thought, his exposition is lucid and helpful.

M. Léon Lallemand's *Histoire de la Charité* (Tome I, L'Antiquité; Picard, 1902), is the work of a man who has "devoted his life to the sacred cause of the poor." As official in the Administration of Public Charities, he witnessed the distresses which followed the siege of Paris, and at the suggestion of Léon Gautier began then the investigations which have resulted in the present history. Long practical experience and a genuine sympathy with the poor, joined with a careful scholarly method, make the work doubly acceptable. It is written for the most part directly from the sources, and generous footnotes are supplied throughout. M. Lallemand has divided his subject into five sections, of which the first covers the field of all antiquity as far as Constantine, the second the rise of the Church, the third the Middle Ages, the fourth the transition to the present, the fifth the nineteenth century. The prospectus leads one to look forward especially to the fifth section as the most original in plan, and most valuable from the practical knowledge of the author.

A useful contribution to descriptive sociology is *Homeric Society, a Sociological Study of the Iliad and Odyssey*, by Dr. Albert Galloway Keller, Instructor in Social Science in Yale University (New York, Longmans, Green & Co., 1902). Primarily it is an arrangement under sociological categories of the information contained in the Greek epics. This is supplemented throughout, however, by data and critical considerations drawn from other sources. The categories are: Ethnic Environment; Industrial Organization; Religious Ideas and Usages; Property; Marriage and the Family; Government, Classes, Justice. This arrangement may be criticised as not sufficiently separating the strictly primitive from the later phases of Homeric society. To make that distinction clear it would be better to follow the chapter on Ethnic Environment with an account of the primitive economy, the religious ideas and usages that grew out of it, and the primitive social organization of marriage, family, clan and tribe; then to present an account of the industrial organization that developed after religion and tribal society had appeared; the law — including property relations — that grew out of the industrial relations and social organization; and the political organization — including government — that supplemented both industry and law. The book is well supplied with references, tables of representative passages, and indices.

M. Albert Métin's *L'Inde d'aujourd'hui* (Paris, Librairie Armand Colin, 1903; 304 pp.) savors somewhat of the gossipy tales of Herodotus.

Descriptions of landscape architecture, and customs, alternating with allusions to the traditions of exploits of local heroes and demigods, make up a sufficiently interesting, and sometimes instructive narrative. M. Métin speaks with no greater authority than that of a tourist; but it would not be easy to find a more eager and intelligent one than he. The two concluding chapters, on Indian agriculture and industry respectively, are of more substantial value, presenting in small compass what one would otherwise have to glean laboriously from more pretentious works.

The Evolution of Modern Liberty, by Dr. George L. Scherger (New York, Longmans, Green & Co., 1904) is a painstaking piece of critical research, undertaken as a doctoral dissertation at the suggestion of Professor Max Lenz of Berlin. The author has attempted to trace the genesis of the political theories embodied in the Bills of Rights and in the French Declaration of the Rights of Man, and to show that these documents are products of a long development. He controverts the thesis of Professor Jellinek that the French Declaration of the Rights of Man is little more than a transcription of clauses from the Bills of Rights of the American states, and at the same time he disagrees with M. Boutmy in attributing the origin of the Declaration chiefly to Rousseau's influence.

Among the efforts to awaken in the minds of boys and girls an intelligent interest in public affairs, a series of articles that recently appeared in the *Youth's Companion* and now collected in an attractive volume, *The Ship of State, by Those at the Helm* (Boston, Ginn & Co., 1903) is deserving of a word of praise. The article on the presidency was written by Mr. Roosevelt while he was governor of New York. Henry Cabot Lodge writes about the life of a senator, and Thomas B. Reed on the life of a congressman. Justice Brewer tells about the Supreme Court, and John D. Long about life in the Navy and about the naval war college. Other articles are: "How our Soldiers are Fed" by William Carey Sanger; "How the Army is Clothed," by General M. F. Ludington; "Good Manners and Diplomacy," by William R. Day; "How Foreign Treaties are Made," by Henry Cabot Lodge; "Uncle Sam's Law Business," by John K. Richards; and "The American Post Office," by W. L. Wilson. Among the best articles are those by Mr. Reed and Justice Brewer. Mr. Lodge's account of the life of a senator, and the articles on the feeding and clothing of the army, leave many interesting things unsaid. The book contains excellent portraits.

An unpretentious record of what has thus far been accomplished in

an exceedingly interesting experiment in popular education is contained in Charles Sprague Smith's *Working with the People* (New York, A. Wessels & Co., 1904). It is the story of the organization and activities of the People's Institute of New York, which has attained such dimensions that the great hall of the Cooper Institute is no longer adequate for it. Mr. Smith has succeeded in bringing together trained lecturers and teachers of diverse views and a great audience of middle class and working people, and in maintaining discussions that are really free and many-sided; in creating, in short, a true democratic forum. No one, we think, can read the story of his achievement without being greatly impressed by its genuine worth and promise.

In a little volume of 104 pages, entitled *The Teaching of History*, and published by the Cambridge University Press, some half-dozen English scholars have set forth their achievements and aspirations on behalf of this favorite study. Maitland furnishes the introduction, while the essays are written by Gwatkin, Poole, Tanner, Cunningham, Ashley and others. Among the subjects discussed are the teaching of ecclesiastical history, of paleography and diplomatics, of ancient history, of constitutional history, of economic history. The teaching of history in the lower schools also receives separate treatment. The essays are all suggestive and stimulating.

Under the title of *Rights of Man in America* (The Imperial Press, Cleveland, 1903 ; 123 pp.) Professor John Bach McMaster publishes three lectures which were originally delivered before a chapter of the Daughters of the American Revolution. The lectures contain a valuable and interesting summary of the steps by which, from the beginning of the Revolution until about 1850, the various legal restrictions on the so-called inalienable rights mentioned in the Declaration of Independence were abolished. His array of facts forcibly illustrates the wide divergence between the ideals of the Revolutionists and the actual conditions existing at the time; between those ideals and the reforms which were then possible. Equally impressive, however, is the recital of the steps by which in the states the inequalities were done away, and the free and equal use of life, liberty and property have been approximately guaranteed to all.

So great has been the demand for the reprinting of the early volumes of the *Collections of the Wisconsin Historical Society*, that it has been decided to reissue the first series of ten volumes at the rate of two a year. The first has come to hand, and contains in addition to a reprint of the contents of the original edition, a memoir and bibliography of Lyman C. Draper, prepared by Mr. Thwaites. The latest volume

of the *Proceedings* of this society contains, in addition to reports and lists of gifts to the library, a monograph on early Wisconsin imprints.

The seventh volume of the *Publications of the Mississippi Historical Society*, (531 pp.), contains a long and interesting array of articles, relating in part to the Civil War and reconstruction in the southwest, and in part to miscellaneous subjects connected with the history of that section. Of special interest are two hitherto unpublished chapters from the pen of Dr. Monette, the historian of the Mississippi valley. The editor, Dr. Riley, contributes a sketch of the life of Col. J. F. H. Claiborne, which has also been issued separately.

Dr. Walter L. Fleming of the University of West Virginia, Morgantown, W. Va., has begun the issue of a series of reprints of documents relating to Reconstruction. Of these, No. I has been received, containing the constitution and ritual of the Knights of the White Camelia.

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POLITICAL SCIENCE QUARTERLY.

PRESENT PROBLEMS OF CONSTITUTIONAL LAW.¹

TEN years ago, one was accustomed to hear the proposition confidently advanced and stoutly maintained that the period of development of constitutional law had closed and that the civilized world was in the period of administrative development. I knew then that this proposition, if not an error, was at least an exaggeration, and everybody knows it now. If the devotees of administrative law and theory had been content to say that constitutional law had reached a much fuller development than administrative law and that its unsolved problems, though highly important, were fewer in number than those of administrative law, no fault could have been found, or could now be found, with the contention. But the events of the last six years especially have shown that the work of the constitution makers is far from completion, and that we have entered, or are about to enter, upon a new period of constitutional development. In view of this situation, it is my purpose to discuss, as far as is possible in the limits of a single paper, a few of the more important problems which await solution or demand a new solution.

All questions of constitutional law, as of political science, may be classified under three grand divisions, *viz.* sovereignty, government and liberty.

I will not enter upon a philosophical treatment of the term and concept, sovereignty. I will only say that in every constitution

¹ Read before the Congress of Arts and Sciences, St. Louis, September 24, 1904.

there should be a workable provision for its own amendment, and that in every perfect, or anything like perfect, constitution, this provision should constitute, for accomplishing this purpose, organs which shall be separate and distinct from, and supreme over, the organs of the government, which shall truly represent the reason and the will of the political society and the political power upon which the constitution rests, and which shall operate according to methods and majorities which will always register the well-considered purpose of that society and that power. I hold the first problem of the constitutional law of the present to be the fashioning of the clause of amendment so as to correspond with these principles.

If we examine the constitutions of the great states of the world and contemplate their history during the last twenty-five years, we shall see at once how pressing this necessity is.

Leaving out of account the Austro-Hungarian *Ausgleich*, as partaking more of the character of a treaty than of a constitution, we shall find that the constitutions of three of these states, *viz.* Spain, Italy and Hungary, contain no provisions at all for their own amendment; that all the rest, excepting France and Switzerland, use exclusively the organs of their governments for making constitutional changes; that France uses the personnel of her legislature, but under different organization, for this purpose; that Switzerland accords her legislature a power of initiating such changes, which in practice frequently creates embarrassments to the prompt and certain action of the popular will; and finally that all, except Great Britain, France, Switzerland and perhaps Norway, require such majorities for action as to make these provisions practically unworkable, except in times of great excitement — the very moments, if any, when they should not work.

Let us take, for example, the provision of amendment in the Constitution of the United States, as being the one in which the majority of this audience is probably most interested, and as being the provision made by that great state which more than any other professes to develop through the methods of gradual and peaceable reform rather than through the European and South American methods of revolution and reaction. This constitution was framed originally, without any warrant of existing law, by a

general convention of delegates selected by the legislatures of the different States of the Confederation, except the legislature of Rhode Island; and it was adopted originally, also without warrant of any existing law, by conventions of delegates chosen by the people within these several States. The general convention proposed, or rather ordained, and that too without any warrant of existing law, that the proposed constitution should go into operation when ratified by conventions of the people in nine of the thirteen States of the Confederation, and it actually went into operation when conventions of the people in only eleven of these States had ratified it.

I shall not enter upon any criticism or any scientific explanation of these procedures. I will only say that to my mind they were entirely extra-legal, and therefore revolutionary, but were necessary because of the absence of any workable method of amendment in the Articles of Confederation.

Warned by this experience, the framers of the new constitution wrote a method of amendment into this instrument which they expected could be and would be effectively exercised.

It *was* exercised, first, to limit the powers of the central government in behalf of the individual, to perfect the realm of individual immunity against the powers of the central government. This was in the line of true progress. It was applied, in the second place, in behalf of the exemption of the States from the jurisdiction of the United States courts, which was the first result in constitutional law of the reaction of 1793 against the national movement of 1787. And it was employed, in the third place, to cure some of the defects in the election of the President and Vice-President. Then for more than sixty years, while the mightiest changes were being realized in the social, political, industrial, commercial and educational conditions of the country, not one trace of any of these changes found its way into the constitutional law of the nation.

We may say that during these years the main direction of the social, political and economic forces down beneath the constitution was, whether consciously recognized or not, towards limiting the powers of the States of the Union in behalf of the powers of the central government and the liberty of the individual. The

pressure of the movement was so strongly felt by a great portion of the people of the country, and so strongly resisted by another great portion, that it led to the appeal to arms of 1861. The method of amendment, intended for every exigency, had proved itself unequal to the emergency, and when employed again in the last three constitutional changes it simply registered the results of battle. In the main, what was then and thus accomplished was correct in substance; but the method which was necessitated showed again that nothing like the perfect principle and form of constitutional amendment had been reached.

And now, again, for thirty-five years mighty changes have been wrought in the structure of our political and civil society and in our commercial and industrial relations, and yet not one of them has been registered, by the process of amendment, in our constitutional law.

From this brief review, it seems entirely manifest that the method of amendment provided in the Constitution of the United States is ordinarily unworkable, and that the first problem of the constitutional law of the present in this country, as well as in almost all other countries, is the revision of the provision for constitutional amendment. Let us now scrutinize a little more closely the details of the provision in order to make its defects clear and definite. At the very first glance we discover that really four methods of amendment are legalized by the provision. The first method authorizes the initiation of an amendment by a constitutional convention of the United States, called by Congress on demand of the legislatures of two-thirds of the States of the Union, and ratification by conventions of the people in three-fourths of the States. The second method authorizes the initiation of an amendment in the same manner and by the same body as the first and ratification by the legislatures of three-fourths of the States. The third method authorizes initiation of the amendment by a two-thirds vote in both houses of Congress and ratification by conventions of the people in three-fourths of the States. And the fourth method authorizes initiation of the amendment in the same manner and by the same body as the third and ratification by the legislatures of three-fourths of the States. Only one of these methods, however, has been employed, *vis.*

the last. Convenience has dictated this, and convenience is ordinarily stronger than principle in a country which moves so fast as ours.

Now it is evident that what makes these methods of amendment practically almost unworkable is the extraordinary majorities required both in the initiating and in the ratifying bodies. The idea was, of course, to make constitutional change conservative. This was indeed a laudable purpose; but such conservatism is a dangerous thing when it is mechanical and artificial, and it always becomes such when it permanently prevents the will of the undoubted permanent majority of the whole people in a democratic republic from realizing its well considered and well determined purposes in its organic law. There is a natural way to secure and preserve true conservatism, a way which does not contradict the fundamental principle of majority right, and that way should always be followed.

This matter of the majority is not, however, the sole element in the problem of a proper provision for constitutional amendment. There are several other points of great importance. One I have already adverted to, *viz.* the error in sound political science of using the governmental organs for the making of constitutional law. To illustrate this, let us consider the process of constitutional amendment in the German imperial constitution. According to the provision of amendment in that instrument, constitutional law can be made by a simple majority vote in the *Reichstag* sustained by forty-five of the fifty-eight voices in the *Bundesrath*, while the two bodies by simple majority vote in each make ordinary law. Now it is the impulse of the *Reichstag* to call every measure which it desires to see passed ordinary law, and it is the impulse of the minority in the *Bundesrath* to call every measure which it desires to defeat constitutional law, and the constitution provides no organ for determining a hermeneutical contest over this point, unless the Emperor's power of promulgating the laws covers the question. Some of the commentators upon that instrument contend that it does. Some say that in the exercise of his power of promulgating the laws the Emperor may look into the content of any measure, and that, if in his opinion the measure is one of constitutional law and has not received the proper major-

ity in the *Bundesrath* for making constitutional change, he may refuse promulgation. But the *Reichstag* does not accept this doctrine. Moreover, it is the practice in the imperial legislature to allow the passage by that body of a law which is not authorized by any power at the time vested in that body by the constitution, provided the law has received in the *Bundesrath* the majority necessary to make a constitutional change. Such a law is not inserted in the text of the constitution as an amendment to that instrument, but is incorporated in the ordinary statutes; and the question at once arises, how such a law may be repealed, whether by the method for making or repealing ordinary law or by that necessary for making constitutional changes.

Under such a practice the whole question as to what is constitutional law and what is ordinary law becomes confused. From the point of view of written constitutions, constitutional law is the law provided in the constitution. From the point of view of unwritten constitutions, on the other hand, constitutional law is that part of the law which ought to be regarded as fundamental and organic. There is sufficient opportunity for difference of opinion in regard to the first kind of constitutional law, but in regard to the second there is no complete agreement on the part of any two minds. Of course the two kinds of constitutional law ought to agree exactly. What, from a true philosophical point of view, is fundamental and organic ought to be in the constitution, and, *vice versa*, every provision included in the constitution ought to be fundamental and organic. But in practice there is a wide difference, as to result, between the interpretation of a written instrument and the formation of individual or popular or legislative or executive opinion as to what part of the law ought to be regarded as fundamental and organic and what part as ordinary. In the first process there is some measure of certainty and continuity; in the second, on the other hand, there is very little. And when the two processes of determination are authorized in the same political system, they are bound to produce inextricable confusion. The root of the difficulty is to be found in making the governmental organs the organs for constitutional amendment. The *personnel* of the government, especially of the legislature, may be used for making constitutional

law. It would be inconvenient, and perhaps injurious, if it could not be. But it is not necessary that this should be effected through the governmental *organizations*. That personnel may be specially organized for this purpose, as the French constitution provides, by uniting all the members of both legislative chambers in one national constitutional convention with constituent power. The body authorized to make constitutional law and constitutional law only being entirely distinct from the body authorized to make ordinary law and ordinary law only, even though composed of the same individual persons, there can be no possibility of confounding the two kinds of law.

Finally, there is a grave problem of constitutional law involved in the exception, to be found in some of the constitutions, of certain subjects from the general power of amendment. This occurs usually in the constitutions of those states which have the federal form of government, as in the constitutions of the United States and of the German Empire, where the existing relations of representation of the States of these Unions in the upper chamber of the legislature is excepted from the ordinary course of amendment and made subject to a still more impossible process. And strangely, and in an even more exaggerated form, this defect is to be found in the French constitution, where two subjects are excepted from any method of amendment whatsoever, *viz.* the form of the government and the disqualification of the descendants of former reigning houses for the presidency of the Republic. These exceptions to the power of the legal sovereign in amendment are rotten spots in any constitution, and if not rooted out they will spread until their mouldering influence will be felt throughout the entire system.

The practical and all-important question, however, is as to the way in which they can be eradicated, regularly and lawfully, and without recourse to revolutionary means. Take again for example the Constitution of the United States, which declares, in the article of amendment, that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." This means, of course, that if the attempt should be made to reduce the representation of any State in the Senate in relation to that of the other States, by the process of constitutional amendment,

this can be effected only with the consent of the legislature of, or of the convention in, the State whose relative representation it is proposed to reduce, together with the consent of one or the other of these bodies in enough of the other States to make out a three-quarter majority of the whole number; and that if the attempt should be made to increase the relative representation of any State, this can be effected only with the consent of every other State of the Union, given through its legislature or convention.

There is thus, theoretically, a way provided for expunging from the Constitution this exception to the ordinary operation of the legal sovereign, the amending power; but practically it is utterly unworkable. If we are ever to rid ourselves of this obstacle we must find some other way than that which I have just outlined. But is there any other legal way? Can the amending clause itself be revised by the ordinary course of amendment so as to omit the exception in behalf of the equal representation of the States in the Senate? It certainly can be so revised as to anything and everything else. But I am quite persuaded that the framers of the constitution never intended to provide any means whereby this exception could be set aside. I am quite sure that they intentionally placed this obstacle in the way of the legal sovereign, as they organized it for ordinary action. I do not think that they realized the fact that they were sowing the seeds of revolution upon this subject by erecting an insurmountable barrier to regular constitutional progress concerning it. The great, natural, universal and irresistible principle of development was not then understood as now. Men really believed, at that stage in the growth of philosophic thought, that they could construct for all time institutions which would need no change or improvement.

There is, indeed, good ground in political philosophy for holding that the amending clause in a constitution may itself be revised by the general process provided therein. These grounds are that there cannot logically be two legal sovereigns within a constitution any more than there can be two original sovereigns behind the constitution, and that there cannot logically be any exceptions from the power of the legal sovereign any more than

there can be from the power of the original sovereign. Different methods of governmental action in regard to the same subject, and exceptions from the powers of the government, are all scientifically legitimate, but the exercise of sovereignty is an entirely different matter. One body and only one can possess it at any given time within a given state, and from its operation nothing whatsoever can logically be excepted. But when we shift from the legal to the political ground in respect to this subject are we not contemplating a revolutionary act? I think this must be acknowledged. It must be conceded that we are contemplating the same kind of a revolutionary act as that committed by the national constitutional convention of 1787 and the ratifying conventions within the States of the Confederation. If that was justifiable, this would be, and upon exactly the same ground, *viz.* that existing legality upon this subject does not comport with the social, political and economic conditions of a national democratic state, but contradicts them in an unendurable way and to an unendurable extent. Sound political theory demands that the amending power within the constitution, the legal sovereign, should be an organization faithfully representing the original sovereign behind the constitution; separate from and independent of the powers of the government, and supreme over these powers and over the liberty of the individual; subject to no limitations or exceptions; sufficiently facile in its action to meet all important exigencies and, when using the governmental organs at all in the making of constitutional law, using them in a ministerial but not in a discretionary capacity. And sound constitutional law demands the same things. Without them the system of constitutional government and constitutional liberty will not be able to stand in permanence. The invincible principle of development will force changes upon any and every constitutional system, as upon everything else in the universe; and if these changes cannot be made by amendment, by the legal sovereign, they will inevitably be made by the government or some part of the government — in Europe by the legislature as a rule, and in the United States by judicial approval of legislative or executive acts. But whichever of these two methods be followed, it comes to the same thing, *viz.* gradual governmental usurpation against

the limitations of the constitution, the ultimate destruction of the constitutional system.

These are the considerations which lead me to hold that the first great problem, logically, of the constitutional law of the present is the construction of a proper provision for amendment, which shall have the qualities which I have just outlined. Not a single great state in the world has such a provision in its constitution, and not a single one has anything approaching it, except, as I have said, France and Switzerland. Of these two, Switzerland has come nearest to it in the provision which allows an amendment to be proposed by fifty thousand Swiss voters and to be ratified and adopted by a majority of the Swiss voters, provided this national majority includes a majority of the voters in a majority of the cantons. The Swiss process of amendment uses the governmental organs at one or two points only, and then only in a ministerial way. The great defect here is that throughout the whole process there is no place nor opportunity for any sufficient discussion of the projected amendment. Such a defect is fatal to any sound development in human affairs.

The second great problem of the constitutional law of the present is, in my judgment, the proper construction of the upper legislative chamber.

With the exception of the princely power this is the oldest among national political institutions. The lower chamber in the legislatures of the present is a modern institution, based upon manhood suffrage or something very near manhood suffrage, and upon representation according to numbers. The senates, on the other hand, are in most cases relics of mediævalism, based upon a variety of sources as to tenure, and with little pretense of a distribution of representation according to modern principles. These defects are to be found even in the senates of some states which have been founded since the close of the middle ages. I think it may be broadly affirmed that, of the seventeen states of the civilized world worthy of mention as having a constitutional law, only four have solved the problem of the upper legislative chamber with anything like a fulfilment of the demands of modern theory or modern conditions; and these four are not states of the first rank in power. They

are Sweden, Norway, the Netherlands and Belgium. Moreover these four are all states with centralized governments, that is, states which are better situated than those having federal governments for the solving of this problem. Of these four, Sweden has come nearest, in my judgment, to the ideal modern solution, providing in its constitution for the election of the senators by the provincial assemblies and the municipal assemblies of such cities as are not under provincial government (all of which bodies are elected by the voters) and distributing the representation in the Senate according to population. This is both conservative and democratic: conservative in the method of the election, and democratic in the method of the distribution of the representation. In the Swedish legislature there is also absolute parity of powers between the two houses, both in the initiation and passage of legislation. Both houses come ultimately from the people, both represent the whole people, both rest upon the same principle of distribution of seats, *viz.* population, and both exercise the same power in legislation, fulfilling thus the four chief requirements for the senate of a modern state.

Apparently the Norwegian Senate approaches as near the solution of the modern problem as the Swedish. But a little consideration of the details will show that this is not quite true. The Norwegians elect all of their legislators as one body; and when they all assemble as one body, the separation into two bodies is effected by drawing lots, one-fourth of the whole number constituting in this manner the Senate and three-fourths the other chamber. The main defect in this method of organizing a senate consists in the fact that it will be composed entirely of members coming from parliamentary districts not represented at all in the other chamber, and *vice versa*; that is, three-fourths of the parliamentary districts are represented in one chamber only and one-fourth in the other only. This tends to the sectionalizing of views and to the weakening of the national consciousness and spirit, or at least to the hindering of the development of the national consciousness and spirit. Then there is another defect. The one-fourth selected in this way and representing directly only one-fourth of the parliamentary districts can not maintain a parity of power with the other chamber composed of members

directly representing three-fourths of these districts. This is manifest in the provision of the constitution itself, respecting the mode of legislation. If the two chambers cannot agree upon a project of law, the constitution orders that they shall, at last, unite in the one original assembly from which they proceeded and determine the matter there. This means, of course, that after a certain time the Senate must practically always succumb to the will of the other chamber. These are serious defects, so serious as almost to take Norway out of the category of states that have made most progress in the solution of the problem.

The members of the Netherland Senate are chosen in the same manner and by the same kind of bodies as those of the Swedish upper chamber; but in the distribution of the seats some consideration is paid to the provincial lines, the distribution not being in exact accord with the principle of population, though not far away from it.

Finally, in the Belgian system, there is a complexity both in the method of choosing the senators and in the distribution of the seats which amounts in each respect to a defect. Most of the senators are chosen directly by the voters, and in the election of these senators, two lower-chamber districts constitute one senatorial district. This is simple and democratic, although somewhat radical. The other seats are filled by the provincial assemblies, and in the distribution of these seats among the several provinces much consideration is had to the provincial lines, the less populous provinces being favored. The purpose of this device is to offset the radical method by which most of the senators are elected, *viz.* the direct vote. This is certainly a makeshift. It would have been far more in accord with sound theory to have provided for the choice of all the senators by the provincial assemblies, while distributing the seats among the provinces according to population. There is nothing necessarily undemocratic in the practice of indirect election, but it is quite undemocratic to distribute the seats in any legislative body except in accordance with the principle of population, or at least in a manner approaching that principle.

When now we turn to the construction of the senate in the other thirteen constitutions, we find ourselves in the midst of a chaos in

the practice with no consistent principle to guide us. We find seats held by virtue of hereditary right, as most largely in the British, Austrian and Hungarian constitutions, but partly in the Spanish constitution also; a system which is certainly mediæval both in origin and spirit. In the same constitutions we find seats held by virtue of office; a system which, besides being for the most part mediæval, conflicts with the modern principle of the incompatibility of office with legislative mandate. We find seats held, again, by royal appointment, as partly in the four systems just mentioned and also in that of Denmark, almost exclusively in the German *Bundesrath*, and exclusively (excepting the seats of the princes of the royal house) in the Italian and Portuguese Senates. Such an appointed Senate is, as a rule, the weakest sort of upper house, being generally a sort of appendage to the crown, affording it no support, but bound to go down with it under popular assault. Finally, we find seats held by election, almost always in the indirect form, as partly in the systems of Spain, Hungary, Denmark and Great Britain, and exclusively in the systems of France, Switzerland and the American states. The elective element in the British House of Lords and in the Hungarian *Magnaten-Tafel* is slight. In the Spanish system one-half of the senators are elected for a term of ten years; and in the Danish system fifty-four of the sixty-six members are elected for a term of eight years. These two countries are headed in the right direction in so far as the senatorial tenure is concerned. But in neither of these cases, and in none of the cases where election is the sole source of the tenure (except, of course, the first four already treated of), and, of course, in none of the other cases, is there any approach to the modern democratic principle of distribution in proportion to population.

It is about as certain as anything human can be that all the species of senatorial tenure except that by election will pass away. It may be expected that the tenure by hereditary right in Great Britain and that by royal appointment in Germany will be the last to yield. But they must all go sooner or later; and it is one of the great problems of constitutional law in all of these states to find the proper and natural substitutes for these antiquated forms or modern makeshifts. It is also a great problem in those

states which have already established the elective tenure for a portion of their senators so to reform the senatorial electoral bodies as to make them more representative of modern conditions. As I have said, there is no sound objection in modern political theory to the indirect election of senators; but the electoral bodies must be truly representative of the original voters, and they must exercise power in the election proportionate to the population which they represent. This is not the case in any of these states. In all of them the original electorate for the senators is much narrower than for the members of the other chamber; and the weight exercised by the different electoral colleges is far from being proportionate to the population of the districts for which they act.

In the five states with republican governments, the ultimate source of the senatorial tenure is naturally the same as that of the membership of the other chamber; and in so far as that point is concerned, they may be said to have solved this part of the senatorial problem. But when we come to the provisions of these constitutions which relate to the distribution of the senatorial representation, we find ourselves confronted with one of the gravest questions of their constitutional law.

Let us consider briefly the facts in each case, beginning with France. Possessing a centralized government, France has not the same reason for making concessions to the lines of local government or administration as have states with systems of federal government. The extremes in the senatorial representation are found in the *départements* of the Hautes Alpes and of the Seine. From the point of view of population, the mountaineers of the former district are about six times more strongly represented in the Senate than the inhabitants of the highly civilized city of Paris. The average discrepancy, however, is not at all so great. Nevertheless it is true that a minority of the population of France is represented by a majority of the seats in the Senate. It is a minority not far removed from the middle line, but still always a minority. It may also be said that the advantage lies, on the whole, rather with the *départements* which are moderately populous, although the greatest advantage lies with the least populous, and the greatest disadvantage with the most populous. While

there is here a problem for the French statesmen, it is not of a very serious nature. More serious for them is the problem of regulating the weight of the communes in the senatorial electoral college for each *département*; for here the smaller communes are as a rule much over-represented.

When we turn from France to the states with federal governments, we become immediately aware that, in the distribution of the senatorial seats, other considerations than the modern doctrine of distribution according to population have been in all cases determinant.

In the first place, in democratic Switzerland, we find that the canton Uri is about thirty times more strongly represented in the *Ständerath*, or Senate, than is the canton Bern, and that the twelve least populous cantons, containing not quite one-third of the population of the whole of Switzerland, are represented in the Senate by a majority of the voices.

Secondly, in the leading state of South America, Brazil, and in the leading state of Central America, Mexico, we find about the same conditions. The Brazilian commonwealth of Matto Grosso is, from the point of view of population, about thirty-four times more strongly represented in the national Senate than the rich and populous commonwealth of Minas Geraes; and the eleven least populous commonwealths of the Brazilian republic, containing about three million inhabitants, are represented by a majority of the voices in the national Senate, while the other ten commonwealths with a population of almost twelve millions are represented by a minority of the senatorial seats. Likewise in the Mexican republic, the commonwealth of Colima is, from the point of view of population, about eighteen times more strongly represented in the national Senate than the commonwealth of Jalisco; and the fifteen least populous commonwealths, containing less than three and a half million inhabitants, are represented in the Senate by a majority of the voices, while the thirteen more populous commonwealths, with a population of more than ten millions, are represented by a minority of the senatorial voices.

But it is the democratic republic of North America which exhibits the most thoroughgoing rotten-borough Senate of any state in the civilized world. In this Union the smallest com-

monwealth, from the point of view of population, is Nevada with 42,335 inhabitants, and the largest is New York with 7,268,894.¹ From the point of view of representation according to numbers, the inhabitants of Nevada are nearly one hundred and seventy-two times more strongly represented than the inhabitants of New York. Again, there are now forty-five commonwealths in this Union with a population of over seventy-six millions. Of this population about fourteen millions reside in the twenty-three least populous commonwealths, and over sixty-two millions in the twenty-two more populous commonwealths. That is, fourteen millions of people are represented in the United States Senate by forty-six senators, while more than sixty-two millions are represented by only forty-four senators.

Of course it may be said, and it is said, that in states with systems of federal government the members of the national senate do not represent the people, but the commonwealths of the Union, and that, therefore, the principle of representation according to population does not apply to the senates of such states. But what, after all, is a commonwealth or State in a democratic republic with a federal government? Is it anything more than the organization of the people within a given district for their autonomous local government? And is there any sound reason why a few people so organized in one district should be equally represented in either house of the national Congress with a great many more people organized in another district for the same purpose? If it were always true that the smaller population possessed all the elements of intellectual and moral culture to a higher degree than the larger, it might be held, perhaps, as a principle of political ethics that the representation of the smaller number should be relatively stronger than that of the larger. But who will say, for example, that the peasants and mountaineers of Uri are superior in knowledge and virtue to the citizens of Bern, or the miners of Nevada to the inhabitants of New York?

I understand only too well that there are still those who will say that the reason for the equal representation of the commonwealths in the national senate is that they are sovereign states, and that sovereignties are equal in representative right no matter

¹ According to the Census of 1900.

what may be their relative strength in population or in any other element of power. My answer to this is, that this is a principle of international law, not of constitutional law; that the commonwealths in these four systems which we are considering are not sovereign states; that in two of them they never were sovereign states nor anything like sovereign states; that in one of these nations, Switzerland, the most of the cantons were once something like petty sovereignties under the *Eidgenossenschaft* and under the Confederation of 1815-48, but were deprived of that quality by the Swiss nation in 1848; and that in the other, the United States, thirteen of the commonwealths possessed something which they called sovereignty under the Articles of Confederation of 1781-89, but were deprived of that quality by the national popular movement of 1787, culminating in the establishment of the national Constitution instead of the quasi-international Articles of Confederation, and that by the trial of arms of 1861-65 the claim to sovereignty by any commonwealth of this Union was put forever to rest.

According to modern views, principles and conditions, no rule of distribution of legislative seats in either chamber except the rule of population can rightfully prevail in a national democratic republic, no matter whether the governmental system be centralized or federal. Some concessions can, of course, be made to administrative convenience, but they must never amount to the permanent investment of a minority of the people with a majority of the voices in either branch of the law-making body, especially where this minority and also the majority are sectional in their composition and not general. Even if we accept the doctrine of minority representation, it would not justify the practice of sectional overweight, which we are considering.

As I have indicated in another connection, it will not be easy to deal with this problem in the United States or in the German Empire. In the other states with federal governments this defect may be cured by the ordinary course of amendment, but in the United States and the German Empire this subject is excepted from the ordinary course of amendment and placed under the protection of a procedure which can, in all probability, never be applied so as to effect any change. Nevertheless, the question

will have to be met, and the **problem** will have to be solved here as well as elsewhere. It **may** not be done, it probably cannot be done, with exact **legality**; but we have the precedent in American constitutional history for a convention of the United States acting with conventions of the people in nine-thirteenths of the commonwealths to disregard the prescripts of the existing law in the amendment or revision of the organic law. We can bring such bodies together by means and through forms already provided in the constitution, and we can go back to the principle, as in 1787, that they represent the sovereign behind the constitution and are not, therefore, bound by the exceptions from the legal power of amendment provided in the constitution. You may call this revolutionary. I think we shall have to concede the point; but it would be a revolution standing on the border line between original sovereign action and legal procedure, and would, probably, be as bloodless as that of 1787.

The third great problem of the constitutional law of the present is, as I conceive it, the fixing of the fundamental relation between the legislative and executive branches of the government. The experience of the world has developed three fundamental systems of practice in regard to this subject. We may term them the presidential system, the parliamentary system and the directorial system.

The principle of the first is substantial independence of the executive and of the legislature, both in tenure and procedure. The tenure of the executive does not, according to this principle, originate in the legislature, and cannot for merely political reasons be determined by the legislature; that is, the legislature cannot impeach, or require the resignation of, the executive or his ministers merely on account of political disagreement with them. Nor, on the other hand, does the tenure of the legislative members originate in the executive nor can the executive cut short their term by dissolution. Neither the executive nor any of his ministers have seat or voice or vote in the legislative chambers, but, on the other hand, the executive is furnished with a veto power upon all legislative acts, practically strong enough to secure his prerogatives against legislative encroachment.

The principle of the second, the parliamentary system, is substantial harmony between the executive and the majority party in the legislature. This is established and maintained by the constitutional requirements that the executive shall take his ministers from the leadership of the majority party in the legislature or in the more popular chamber thereof, shall follow the advice of his ministers, and shall dismiss them from office, generally through the form of voluntary resignation, when they fail to receive the support of that majority upon fundamental questions, or else shall dissolve the legislature or the lower chamber thereof, and appeal to the voters, whose decision must be acquiesced in by all, to restore the lost harmony. Under this system the real executive is the ministry. It bears the responsibility for the executive acts. Its members have seat, voice and vote in the legislative chambers, but no veto upon legislative acts.

The principle of the third, the directorial system, is the complete subordination of the executive to the legislature, that is, complete control of the executive tenure by the legislature, entire responsibility of the executive to the legislature, no power in the executive to dissolve the legislature or either branch thereof, no seat, voice or vote in either of the legislative chambers except by order or permission of the chambers, and no veto upon legislative acts. On the other hand, while the executive is as a rule permitted to introduce measures into the legislature, their defeat or rejection does not call for the resignation of the directory or of that member of it particularly responsible for the project. He or they must simply submit to the will of the existing legislature in every case and go on under its instructions.

The presidential system goes naturally with the elected executive, the parliamentary with the hereditary executive, while the directorial system belongs scientifically nowhere. The directory is scientifically and historically discredited as an executive system. It exists in only one of the seventeen states which I have brought under this study, *viz.* Switzerland, although it seems to be on the way of establishment in one other, *viz.* Norway, where the successful insistence of the Norwegians that the king's ministers shall sit in the legislature and shall resign when out of harmony with the legislative majority, without according the

directly representing three-fourths of these districts. This is manifest in the provision of the constitution itself, respecting the mode of legislation. If the two chambers cannot agree upon a project of law, the constitution orders that they shall, at last, unite in the one original assembly from which they proceeded and determine the matter there. This means, of course, that after a certain time the Senate must practically always succumb to the will of the other chamber. These are serious defects, so serious as almost to take Norway out of the category of states that have made most progress in the solution of the problem.

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the practice with no consistent principle to guide us. We find seats held by virtue of hereditary right, as most largely in the British, Austrian and Hungarian constitutions, but partly in the Spanish constitution also; a system which is certainly mediæval both in origin and spirit. In the same constitutions we find seats held by virtue of office; a system which, besides being for the most part mediæval, conflicts with the modern principle of the incompatibility of office with legislative mandate. We find seats held, again, by royal appointment, as partly in the four systems just mentioned and also in that of Denmark, almost exclusively in the German *Bundesrath*, and exclusively (excepting the seats of the princes of the royal house) in the Italian and Portuguese Senates. Such an appointed Senate is, as a rule, the weakest sort of upper house, being generally a sort of appendage to the crown, affording it no support, but bound to go down with it under popular assault. Finally, we find seats held by election, almost always in the indirect form, as partly in the systems of Spain, Hungary, Denmark and Great Britain, and exclusively in the systems of France, Switzerland and the American states. The elective element in the British House of Lords and in the Hungarian *Magnaten-Tafel* is slight. In the Spanish system one-half of the senators are elected for a term of ten years; and in the Danish system fifty-four of the sixty-six members are elected for a term of eight years. These two countries are headed in the right direction in so far as the senatorial tenure is concerned. But in neither of these cases, and in none of the cases where election is the sole source of the tenure (except, of course, the first four already treated of), and, of course, in none of the other cases, is there any approach to the modern democratic principle of distribution in proportion to population.

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In the five states with republican governments, the ultimate source of the senatorial tenure is naturally the same as that of the membership of the other chamber; and in so far as that point is concerned, they may be said to have solved this part of the senatorial problem. But when we come to the provisions of these constitutions which relate to the distribution of the senatorial representation, we find ourselves confronted with one of the gravest questions of their constitutional law.

Let us consider briefly the facts in each case, beginning with France. Possessing a centralized government, France has not the same reason for making concessions to the lines of local government or administration as have states with systems of federal government. The extremes in the senatorial representation are found in the *départements* of the Hautes Alpes and of the Seine. From the point of view of population, the mountaineers of the former district are about six times more strongly represented in the Senate than the inhabitants of the highly civilized city of Paris. The average discrepancy, however, is not at all so great. Nevertheless it is true that a minority of the population of France is represented by a majority of the seats in the Senate. It is a minority not far removed from the middle line, but still always a minority. It may also be said that the advantage lies, on the whole, rather with the *départements* which are moderately populous, although the greatest advantage lies with the least populous, and the greatest disadvantage with the most populous. While

there is here a problem for the French statesmen, it is not of a very serious nature. More serious for them is the problem of regulating the weight of the communes in the senatorial electoral college for each *département*; for here the smaller communes are as a rule much over-represented.

When we turn from France to the states with federal governments, we become immediately aware that, in the distribution of the senatorial seats, other considerations than the modern doctrine of distribution according to population have been in all cases determinant.

In the first place, in democratic Switzerland, we find that the canton Uri is about thirty times more strongly represented in the *Ständerath*, or Senate, than is the canton Bern, and that the twelve least populous cantons, containing not quite one-third of the population of the whole of Switzerland, are represented in the Senate by a majority of the voices.

Secondly, in the leading state of South America, Brazil, and in the leading state of Central America, Mexico, we find about the same conditions. The Brazilian commonwealth of Matto Grosso is, from the point of view of population, about thirty-four times more strongly represented in the national Senate than the rich and populous commonwealth of Minas Geraes; and the eleven least populous commonwealths of the Brazilian republic, containing about three million inhabitants, are represented by a majority of the voices in the national Senate, while the other ten commonwealths with a population of almost twelve millions are represented by a minority of the senatorial seats. Likewise in the Mexican republic, the commonwealth of Colima is, from the point of view of population, about eighteen times more strongly represented in the national Senate than the commonwealth of Jalisco; and the fifteen least populous commonwealths, containing less than three and a half million inhabitants, are represented in the Senate by a majority of the voices, while the thirteen more populous commonwealths, with a population of more than ten millions, are represented by a minority of the senatorial voices.

But it is the democratic republic of North America which exhibits the most thoroughgoing rotten-borough Senate of any state in the civilized world. In this Union the smallest com-

monwealth, from the point of view of population, is Nevada with 42,335 inhabitants, and the largest is New York with 7,268,894.¹ From the point of view of representation according to numbers, the inhabitants of Nevada are nearly one hundred and seventy-two times more strongly represented than the inhabitants of New York. Again, there are now forty-five commonwealths in this Union with a population of over seventy-six millions. Of this population about fourteen millions reside in the twenty-three least populous commonwealths, and over sixty-two millions in the twenty-two more populous commonwealths. That is, fourteen millions of people are represented in the United States Senate by forty-six senators, while more than sixty-two millions are represented by only forty-four senators.

Of course it may be said, and it is said, that in states with systems of federal government the members of the national senate do not represent the people, but the commonwealths of the Union, and that, therefore, the principle of representation according to population does not apply to the senates of such states. But what, after all, is a commonwealth or State in a democratic republic with a federal government? Is it anything more than the organization of the people within a given district for their autonomous local government? And is there any sound reason why a few people so organized in one district should be equally represented in either house of the national Congress with a great many more people organized in another district for the same purpose? If it were always true that the smaller population possessed all the elements of intellectual and moral culture to a higher degree than the larger, it might be held, perhaps, as a principle of political ethics that the representation of the smaller number should be relatively stronger than that of the larger. But who will say, for example, that the peasants and mountaineers of Uri are superior in knowledge and virtue to the citizens of Bern, or the miners of Nevada to the inhabitants of New York?

I understand only too well that there are still those who will say that the reason for the equal representation of the commonwealths in the national senate is that they are sovereign states, and that sovereignties are equal in representative right no matter

¹ According to the Census of 1900.

what may be their relative strength in population or in any other element of power. My answer to this is, that this is a principle of international law, not of constitutional law; that the commonwealths in these four systems which we are considering are not sovereign states; that in two of them they never were sovereign states nor anything like sovereign states; that in one of these nations, Switzerland, the most of the cantons were once something like petty sovereignties under the *Eidgenossenschaft* and under the Confederation of 1815-48, but were deprived of that quality by the Swiss nation in 1848; and that in the other, the United States, thirteen of the commonwealths possessed something which they called sovereignty under the Articles of Confederation of 1781-89, but were deprived of that quality by the national popular movement of 1787, culminating in the establishment of the national Constitution instead of the quasi-international Articles of Confederation, and that by the trial of arms of 1861-65 the claim to sovereignty by any commonwealth of this Union was put forever to rest.

According to modern views, principles and conditions, no rule of distribution of legislative seats in either chamber except the rule of population can rightfully prevail in a national democratic republic, no matter whether the governmental system be centralized or federal. Some concessions can, of course, be made to administrative convenience, but they must never amount to the permanent investment of a minority of the people with a majority of the voices in either branch of the law-making body, especially where this minority and also the majority are sectional in their composition and not general. Even if we accept the doctrine of minority representation, it would not justify the practice of sectional overweight, which we are considering.

As I have indicated in another connection, it will not be easy to deal with this problem in the United States or in the German Empire. In the other states with federal governments this defect may be cured by the ordinary course of amendment, but in the United States and the German Empire this subject is excepted from the ordinary course of amendment and placed under the protection of a procedure which can, in all probability, never be applied so as to effect any change. Nevertheless, the question

declares outright that the judicial tribunals shall have no power to pass upon the constitutionality of legislative acts.

The principle of European jurisprudence upon this point seems to be that the legislature is the proper protector of individual immunities against governmental power. In Europe, the title government is applied only to the executive, and the statement of the proposition as it presents itself to the European mind would be that the immunities of the individual are protected against governmental encroachment by the representatives of the people. In America, on the other hand, we consider the legislature to be a branch of the government, and therefore it appears to us as a sort of Celtic hoax to speak of the government defending the immunities of the individual against itself. In fact some of our greatest statesmen have contended that the judiciary is also a branch of the government, and that we are subjecting ourselves to the same kind of a hoax when we imagine that the judiciary will, in the long run, protect the realm of individual immunity against governmental encroachment. It appears, at times, as if they were right, and as if the judiciary were really casting its lot with the political branches of the government for the purpose of expanding governmental power at the expense of individual liberty. Still, on the whole, this has not been true. On the whole, a judiciary established directly by the constitution, composed of judges with life terms, sustained by a sound popular knowledge of what the immunity or liberty of the individual purports and a general popular determination to uphold it, is the best possible organ to be vested with the protection of that immunity against governmental encroachment as well as against encroachment from any other conceivable source. It is the only real antidote for the doctrine of socialism in regard to civil liberty. The socialistic doctrine, stated in a sentence, is that the individual is subject at all points to the control of the majority. This doctrine is an absolute negation of the true principle of civil liberty. As we have seen, civil liberty is individual immunity within a sphere marked out by the constitution against governmental encroachment or encroachment from any other source. It is the constitutional realm of individuality. And if in any country all government and every organization and every indi-

vidual, except only one, should stand upon one side, and the single individual upon the other, it would be the constitutional duty of the body charged with the function of maintaining civil liberty to protect that single individual within this sphere against encroachment from any and every source, and to summon the whole power of the nation to its aid if necessary. And it would be the constitutional duty of those summoned to obey the call and render the aid required, although it might be directed against their own conceived views and interests. The doctrine of the greatest good to the greatest number and the principle of majority rule have no application whatsoever within this domain. When a constitution is being framed or amended, then the question of the nature and extent of civil liberty or individual immunity is indeed a matter of highest policy for the sovereign to determine in accordance with its own forms of procedure; but, once established, it becomes subject only to the provisions and principles of the constitution, interpreted by the organs of justice, and is removed entirely from the realm of legislative or executive policy and majority control. Now the only way to maintain this true idea and principle in regard to civil liberty is to put its protection under a non-political body, the organs of justice, not the organs for the fixing of policies, and to vest the organs of justice with the constitutional power to nullify any acts of the political branches of the government which may, in their judgment, undertake to encroach thereon. The legislature, in these modern times, is the branch of the government which is most prone to undertake these encroachments. The legislature is the branch which by its very nature regards everything as a matter of policy to be determined, at each moment, by majority action — and that action based upon majority will, not upon majority interpretation of higher law. It is the branch of the government which is almost sure to lose sight of the distinction between individual immunity and what it conceives to be general welfare, between justice and policy. It is absolutely certain to do so when a socialistic majority holds sway in the legislature. It was natural that the European peoples, accustomed to the despotism of the executive with the courts as a branch of the royal power, should have come upon the idea in the period of the revolutions,

that is, in the period of their transition from absolute to constitutional government, that the representatives of the people in the legislature would be the only reliable support for civil liberty. Perhaps this was correct for that period and for those conditions. But I am sure that that period and those conditions have now passed, and that the realm of individual immunity is now in more danger from legislative than from executive encroachment. It is under the force of this conviction that I contend that the problem of creating an independent judiciary by constitutional amendment and vesting it with the protection of individual immunity against governmental encroachment, whether executive or legislative, as well as against encroachments from any other source, is one of the chief constitutional problems now confronting the European states. It will cost some effort to educate the European peoples up to an appreciation of this idea. How far they are away from it is indicated by the fact that when they immigrate into the United States, because this is a "free country," as they say, they almost always do what they can, when they do anything, to obliterate that great distinction between individual immunity and general welfare, between justice and policy, upon which, more than upon anything else, American liberty rests. The doctrine of the labor unions, which are predominantly European both in their composition and tendencies, that an individual shall not be allowed to work upon such terms as he may be able and willing to make, because in the conception of the majority of some labor union, or perhaps of all labor unions, it may be detrimental to their general welfare, is a good example of the profound ignorance on their part of this great American distinction and principle. Difficult, however, as it may be to instil the idea of this distinction into the European mind, still I am fully persuaded that the attainment by the European peoples of real constitutional government depends upon it. The alternative to it is, in the long run, legislative absolutism.

While I hold up the Constitution of the United States as the model in this respect, yet I do not pretend that this model is entirely perfect. Two great problems have confronted the American practice during the last fifty years, neither of which has been satisfactorily solved, and neither of which, I fear, will be so solved without further constitutional amendment.

The first problem concerns the meaning of the thirteenth and fourteenth amendments, which, with the fifteenth, make up the constitutional product of the Civil War. There is not much doubt that the intention of the framers of these amendments was to place the entire domain of civil liberty or individual immunity under the protection of the United States authorities, and to vest the national judiciary with power to prevent encroachments thereon not only when proceeding from the government of the United States or the governments of the States but also when proceeding from combinations of individuals within the States. The Supreme Court of the United States has, however, held that these amendments did not extend the protecting power of the national authorities over this sphere to any such degree, but left the original control of the States over this domain unimpaired, except upon the specific points withdrawn by these amendments from that control; and that the national judiciary can protect the individual immunity provided in the fourteenth amendment only against encroachments attempted by the States, but not against those attempted by individuals or combinations of individuals within the States.

I contend that this is no satisfactory solution of the problem, because, in the first place, in a national state, although it may have a system of federal or dual government, sound political science requires that the entire individual immunity shall be defined, in principle, in the national constitution and shall have the fundamental means and guarantees of its defense provided in that constitution. The most fundamental and important thing in any free government is the system of individual immunity. Free government exists chiefly for its maintenance and natural enlargement. The contents of this immunity and the methods and means of its defense should therefore be determined by the national consciousness of right and justice. Any other principle than this belongs, not to the modern system of national states, but to the bygone system of confederated states. It was a resurrection of the doctrine of States' rights, in the extreme, when the Supreme Court of the United States put the interpretation which it did upon the new amendments — a doctrine which should have been considered as entirely cast out of this system by the results

of the Civil War. This solution is unsatisfactory, in the second place, because it perpetuates the contention between the nation and the States concerning the control of this sphere, while if there is anything in a political system that ought to be made clear and fixed and simple it is this domain of civil liberty. The welfare and prosperity of the whole people depend upon it in a much higher degree than upon any other part of that system. Uncertainty about it and contention over it cannot result, in the long run, advantageously to the average citizen, although it may allow a larger license to the powerful.

The second problem under this head to which I would refer has been produced by the experience of the last six years of the Republic in what is called its imperial policy. This problem had to come, sooner or later. No country with so high a civilization as the United States can keep that civilization all to itself in the present condition of barbarism or quasi-barbarism throughout the larger part of the world. It must share its civilization with other peoples, sometimes even as a forced gift. This is nature's principle, and no civilized state can permanently resist its demand. It came rather suddenly upon our country, and some of us thought that we were not quite prepared for it, that we had not yet placed our own house quite in order. But every student and observer of the world's history and the world's methods knows that civilized nations are not, in the great world plan, allowed to delay the discharge of the duty of spreading civilization until, in their own opinion, they are ready to proceed. Something always happens to drive them forward before they are perfectly prepared and equipped for the great work. And so before the United States had fashioned its constitutional law to meet the exigencies of a colonial or imperial policy, the possession of insular territory was thrust upon the great Republic. We had to take possession first, and then by force of necessity adjust our political situation to the requirements of the situation. It has not been an easy problem, and no one pretends that we have solved it perfectly or completely. Both the Congress, the executive and the courts have shared in the work and in the responsibility; but candor compels us to say that, if we are to continue in this sort of work, it would be desirable, to say the least, so to

amend the Constitution as to relieve the different branches of the government from the necessity of making usurpations of power, or something very like usurpations, to meet urgent conditions.

It is only since June 21 of the present year that we have been able to state with any certainty what the colonial policy, or imperial policy, of the Republic is. I think it can be now briefly expressed. It is that all of the territory of the North American continent over which the sovereignty of the United States may become extended shall be made, ultimately, States of the Union; and that all extra-continental territory over which it may become extended shall either be made, ultimately, States of the Union — as, possibly, the Hawaiian Islands and Porto Rico — or be erected into communities even more completely self-governing than States of the Union, under the protectorate of the United States — as Cuba already and, later on, the Philippines — that protectorate to be exercised chiefly for the purposes of preventing them from lapsing into barbarism internally, or from becoming a prey to the greed of other powers. This is a policy worthy of the Great Republic. It is the true imperial policy for a great civilized state engaged in the work of spreading civilization throughout the world. In comparison with it, the colonial policies of other countries appear mean and sordid and altogether lacking in the element of altruism necessary to real success in executing the mission of civilization.

Following such a noble policy as this, it is not difficult to forecast something of the future of this country. It might be a bold, but it would not be a reckless, prophecy to say that the child is now born who will see the States of this Union stretching from the Isthmus of Panama to the North as far as civilized man can inhabit, peopled by two hundred and fifty millions of freemen, exercising a free protectorate over South America, most of the islands of the Pacific and a large part of Asia. We possess already the extremes of this vast continental territory, as well as the great heart of it, and the most important Pacific Islands; and we have already a footing of influence in Japan and China hardly enjoyed by any other power. The exalted policy which I take to be the imperial policy of this nation cannot fail to extend that influence, prestige and power almost beyond measure.

Do not understand me as claiming the development of such a policy for the party at present in power in Congress and the present administration without the aid of their party opponents. I am not at all sure that, in the immediate enthusiasm of victory and under the necessity of exercising temporary absolutism in government in the newly acquired territories, the party in power would not have lost sight of the real purpose of their work in the world's civilization, except for the earnest expostulations of their opponents calling them back to the contemplation of the historic principles of the Republic. I rather fear they would. This noble policy is, therefore, the resultant of two forces rather than the direct product of one. It is the policy of the Nation rather than of any party within the Nation or of any part of the Nation. As such, it is sound and true and unchangeable, and is destined to be pursued no matter what party shall hold the reins of the government.

But we have some constitutional difficulties in the way of the realization of this policy. These difficulties relate to the constitutional powers of the United States government and the limitations imposed thereon in behalf of individual immunity within newly acquired territory. It is settled that the United States government may acquire territory for the United States by treaty or conquest; that it may set up a temporary military régime therein against which there is no constitutional immunity for the individual; that it may relinquish possession of such territory to the inhabitants thereof or to another power, either absolutely or under such conditions in the form of a treaty as may be agreed upon by the parties, and may enforce the stipulations of the agreement in such ways as may have been agreed on, or in such ways as are recognized by the customs and practices of nations; or that it may perfect its acquisition and transform the temporary military despotism therein into such civil government as Congress may establish under the limitations of the Constitution in behalf of civil liberty. I say that these points are all well settled. But there is some question about the power of the United States government to exercise a protectorate over peoples occupying territory which is not a part of the United States, especially when that protectorate shall not have been established by treaty

and shall not be exercised under the forms of international agreement or custom. There is not a word in the Constitution expressly authorizing it, and it is a grave question whether there is a word from which such power can be derived.

Moreover it has appeared to the United States government desirable, perhaps I should say absolutely necessary, to make the transition from military despotism in the government of some of these new acquisitions to a first and temporary form of civil government without constitutional limitations in behalf of individual liberty, that is, to a temporary civil despotism or something of that nature, and for this it is extremely questionable whether there is any warrant in the Constitution. In order to meet the wishes of the government, or perhaps the necessities of the government, in this respect, the Supreme Court of the United States has so strained its powers of constitutional interpretation as virtually to enact, in the opinion of a large number of the best citizens of the country, constitutional legislation — constitutional legislation, too, which upon one point at least contradicts the prime purpose of the only legitimate imperial policy which a free republic can have. It is quite possible that the state of society and of the population in a newly acquired district may necessitate more summary judicial processes than those of the juries, and that public security and even individual liberty will be better protected under the more summary forms; and that, therefore, a judicial interpretation of the Constitution relieving the government from these limitations as to process in such districts would have a moral ground at least to stand on; but when the court allows the Congress to overstep the constitutional limitations on the government in behalf of the freedom of trade and intercourse between the people of such districts and the people in other parts of the United States and to erect a special tariff against such trade and intercourse, and thus to destroy, or at least greatly weaken, the prime means of extending civilization to the inhabitants of such districts, *viz.* a free commerce in mind and things, then neither the court nor the Congress nor the administration has any ground of any sort on which to stand, and we need an amendment to the Constitution to express the reason and the will of the sovereign upon this subject.

We have in this whole question of territorial expansion one of the greatest problems of the constitutional law of this Republic, one which affects the whole world. It affects first of all the Republic itself, because upon its rightful solution depends the moral right of the Republic to have any imperial policy at all. It affects the peoples of the dark places of the world, who, though apparently unable to secure the blessings of civilization for themselves, certainly have the right to be left in their barbarism unless the intruding nation comes with a chiefly altruistic purpose. And it affects the other civilized powers in the example which it shall furnish them for their own work in the spread of civilization, for if the great Republic pursues an egoistic policy, they will certainly do likewise, and it is to be hoped that if it takes the other and the true course, they will not go in the opposite direction. No grander mission can be imagined than that which is now open to this American nation; and the time is now ripe for the sovereign people to discuss it in all its bearings, independently of ordinary party politics, and to write in the Constitution the methods and means which the government may employ, the purposes which its activities must subserve, and above all, the limitations upon the government in behalf of the civil liberty of every individual who may be brought under its jurisdiction or protection in realizing this transcendent mission, the civilization of the world.

JOHN W. BURGESS.

PARLIAMENTARY OBSTRUCTION.

PARLIAMENTARY obstruction is no longer a mere intermezzo in the history of this or that parliament. It has become an international phenomenon which, in threatening manner, calls in question the whole future of parliamentary government. Nor indeed is it the legislative assemblies of Europe alone from which reports of parliamentary obstruction are brought. It is known in the four quarters of the globe. Long ago the Americans coined a special word for it, "filibustering," a word which, reminding us of piratical raids upon commerce, aptly characterizes a lawless arrest of the orderly conduct of business. The Parliament of Cape Colony has tried obstruction against the motherland; and, as early as 1901, the House of Representatives of the young Australian Commonwealth, shortly after its birth, had the pleasure of a twenty-seven-hour session. Almost daily, from some corner of the earth, come reports of threatened obstruction, of the struggle against it, of the victory of one side or the other. The results of obstruction, too, have already become manifest in parliamentary law. In many legislatures radical changes have been made in the rules of procedure; in others, such changes have been proposed and seriously debated. From the present, however, our gaze is turned with anxiety to the future.

- It cannot be ignored, although the obstructionists often fail to perceive it, that obstruction militates not only against the right of the parliamentary majority to decide but against the parliaments themselves as institutions. When, however, we consider the importance of parliament in the life of the modern state, and the fact that existing constitutions make no provision for filling the gap left by the failure of this organ to perform its functions, there appears back of obstruction, as its final issue, a condition of lawlessness which, according to the situation of the single state, may assume the form of despotism or of anarchy. Therefore the question how obstruction may be overcome is an extremely serious one; all the more serious because the answer to it is especially difficult.

It is significant that this latest phenomenon in the realm of parliamentary life, like parliamentary life itself, is of Anglo-Saxon origin. The beginnings of obstruction can be observed in England even in the eighteenth century. In the United States, a stubborn attempt at obstruction in the House of Representatives led, in 1841, to the "one-hour rule," still in force, whereby no member taking part in a debate may speak longer than one hour. This measure was supplemented by the stricter rule of "five-minute debates," whereby a member who moves an amendment has no more than five minutes' time in which to present it, and a single member of the opposition the same length of time in which to contest it. In the England of the nineteenth century, too, there was a good old time, which lasted till the first Irish obstruction, when even members of the cabinet looked upon obstruction as a permissible means of defeating proposals initiated by the House and not acceptable to the government; to say nothing of leaders of the opposition who sought to hinder the majority by wordy speeches. It is told of no less a personage than Sir Robert Peel that, in 1831, he made no fewer than forty-eight speeches in fourteen days.

Of historical significance for England and, through the example it set, for the rest of the world as well, was the obstruction on the part of the Irish which began in 1877. Here for the first time was presented, in an epoch-making manner, the great problem as to the limits of the rights of parliamentary minorities. May the minority justifiably force its will upon the majority to the extent of compelling an abandonment of proposed measures? Further, may the minority, by means of the disadvantages associated with the obstruction of parliamentary business, compel the majority to carry out the positive wishes of the minority? In other words, is it permissible to concede to the minority a decisive share in the government? This problem has since been presented over and over again, now in this state, now in that; here temporarily in a specific case, there repeatedly in numerous cases; in several states, however, in a way that shakes the foundations of the whole political structure. That among these latter Austria-Hungary is to be placed in the front rank goes without saying.

The means which obstruction has at its disposal depend en-

tirely on the character of the rules which govern the transaction of parliamentary business. These means are of two kinds. Either provisions of the standing rules which expressly guarantee certain rights to the minority are employed to prevent the passage of parliamentary resolutions, or open places in the disciplinary portion of the standing rules are so utilized as to place the majority under duress. A distinction must therefore be made between obstruction by means provided in the standing rules and obstruction by means contrary to the standing rules.

That form of obstruction which operates on legal ground possesses a great quantity of effective ammunition. The oldest and best known is the continuous speech. Of this there are many wonderful examples on record. How modest seems the seven-hour obstruction speech of the Social Democrat, Antrick, in the German Reichstag, and even the twelve-hour oratorical effort of Dr. Lecher in the Austrian House of Deputies, compared with a twenty-six-hour speech which was delivered in 1893 in the parliament of British Columbia, or with the thirty-seven-hour address in which a delegate in the Roumanian Chamber of Deputies, in 1897, demanded the indictment of Joan Bratiano! The annals of those American chambers which as yet have placed no limitations on debate record monstrous obstruction sessions. In April, 1896, a sitting of the Canadian House of Commons devoted to a bill dealing with the schools in Manitoba lasted a hundred and eighty hours, and in Chile a single speech is reported to have extended through ten days of a session.

Other means of obstruction are repeated interpellations, the reading of which may occupy many hours or even days; cumulation of amendments; putting of urgency motions; demands that the roll be called in taking votes or in order to determine whether a quorum is present for the transaction of business; and making the assembly incompetent to act by abstaining from participation in its proceedings. Used with the necessary skill, these means, singly or combined, can completely cripple the whole activity of the chamber in which they are employed.

Much more dangerous, however, is obstruction through conduct contrary to discipline. There are many parliaments which are able to exclude individual members for a time on the charge of

disorderly conduct, but even such measures suffice only exceptionally to suppress tumults which are set in motion by whole parties. What a rôle tumults of this sort have played in the most recent parliamentary history is known to everybody. They have been compared frequently to revolutions, from which, however, they differ essentially in that the revolting minority can never take the place of the majority. Each victory of the minority signifies a confusion, never a clarification, of the situation, since the minority which celebrates the greatest triumphs can, according to its nature, create nothing positive: it is and remains dependent upon the concessions which the majority sees fit to make.

Transitory obstructions do not seriously disturb the politician. In single cases they may mitigate the asperities of partisan conflicts; indeed, the mere prospect of obstruction may hold back a majority from a relentless exploiting of its power. But stubborn, systematic obstruction raises the anxious question: How is it to be fought and overcome? This question belongs to the greatest problems of the statecraft of the present day. Its answer appears at first sight to be extraordinarily simple: the standing rules should be changed to meet the situation. But the easiest solution is often the hardest to attain; and even where the change is easily secured, the gravest consequences may follow. The remedy is frequently no less dangerous than the disease.

Before all else, account must be taken of the individual character of the state in which obstruction is to be crushed. If the state is well knit together, if no powerful parties inclined to resistance or to revolt stand back of the obstructionist delegates, then the change in the standing rules may be made without hesitation. So far as they are not based on clauses of the constitution or on statutory provisions, the standing rules may ordinarily be changed at any time by the chamber concerned. In this matter the majority has absolute power. Even if the procedure of the majority, in making such a change, be contrary to the existing rules, this fact will have no practical importance, since a breach of the standing rules in passing a resolution never carries with it the nullity of the resolution so passed. Outside of the chamber there is no one whose right and duty it is to bring under review the observance of the chamber's *loi intérieure*. Pure parliament-

ary law, *i.e.* the order of business developed within the field left open by the constitution and the statutes, lacks sanction to a degree unparallel in other parts of the legal order, and all safeguards which juristic ingenuity can contrive have no significance in practical politics. Therefore a majority is able brutally to misuse its power, unchecked by the existence of any means of defense against its arbitrary proceedings. The minority may protest, complain of oppression, cry out about infraction of rights and a *coup d'état*, but all this has no practical importance whatever, especially if the government is of one mind with the chamber. We have accordingly witnessed, in many states, the spectacle of changes in the order of business to the disadvantage of the minority and under its fiery protests. The proceedings in the German Reichstag on the occasion of the customs tariff debate are still fresh in everyone's memory.

The case is wholly different, however, in states where large bodies of people, whose excitement is to be feared, stand behind the parliamentary parties, or where the majority of the day must be constantly on its guard lest it be forced down into a minority. Here amendments to the standing rules encounter great difficulties, if they do not become absolutely impossible. Although the majority has control over the order of business, it must also possess the power to force its measures through without regard to consequences. Such power is not found in numerical strength only, but also in the support given to the majority, above and below, outside the chamber. The history of the "*lex Falkenhayn*" is a most instructive example of the limits of the power of a parliamentary majority.

A further question demands consideration: what effects the struggle against obstruction, carried on within the field of the order of business, has upon the whole structure of the state. We must not deceive ourselves by imagining that the effects are limited to the immediate object of the conflict: they extend far beyond it. If the standing rules are amended, the amendments can take no other direction than the limitation of the minority in its entire parliamentary activity; and this again can be effected only by subjecting the initiative of the individual members and their efficiency in other respects to far-reaching restrictions. The time

allowed for speaking will be shortened, the right of introducing motions will be made to depend upon the coöperation of a large number of members, the discussion of motions originating in the chamber will be relegated to certain days, a maximum duration will be established for sessions or for debates, the putting of interpellations will be associated with impeding formalities, such as a consenting vote of the whole chamber, *etc.* By such measures the activity of the parliament is necessarily confined within narrow limits; and the further this limitation goes, the more does the chamber resemble a voting machine. In America there is much complaint that the House of Representatives, with its severe restrictions upon debate, is falling behind the Senate in importance, and that the House does scarcely anything more than ratify the resolutions of its committees. These committees, however, stand in close touch with the administration, and therefore the administration, working through the committees, is gaining an influence upon legislative business that is contrary to the constitution. Similar results are even more manifest in states with a parliamentary government. The more the standing rules repress the minority, the more do they enhance the power of the majority and therefore also the power of the government which issues from the majority. It is highly interesting to follow from this point of view the history of obstruction in England. The closure and other new measures have given the cabinet unlimited control of the debates; and bitter complaints are made that it is now scarcely possible for a member of the House of Commons, who does not belong to the government party, to introduce an independent motion of any importance, particularly since the time for dealing with such motions has been reduced to a single day in the week with a definitely limited number of hours. It is, however, not the minority party only that suffers loss of power: the same is true of the majority. The power of a majority is manifested not only in its relations to the minority, but above all in its relations to the government which it supports; and this power is unchangeably connected with the measure of free activity in his sphere conceded to each member of parliament. History, indeed, can show one parliament in which obstruction was practically impossible. This was the French legislative body under the Consulate and the First

Empire. In it neither debates nor comments nor interpellations were permitted: it did nothing but vote. In this instance the idea of the voting machine was fully realized. How insignificant such a parliament is, how little strength it possesses to withstand a despotic government, the French history of those days most distinctly demonstrates.

The power to combat obstruction which is provided in rules of the new type, and which is obtained through curtailment of the rights of minorities, would not perhaps be purchased at too dear a price, provided that the regular activity of parliament in all circumstances were thereby guaranteed. But this is in no wise the case. When no methods are left within the rules for carrying on obstruction, a determined minority will resort to methods contrary to the rules. Against single members, in such cases, severe disciplinary measures may be useful; but the expulsion of whole parties from parliament means only that the struggle is transferred from the House to the streets. This holds good even in case of a parliament so powerful and well knit as that of Great Britain. The procedure of the majority of the House of Commons against the Irish, in 1901, was indeed adopted under the greatest provocation, but no one can assert that it was adapted to lead to a satisfactory solution of the Irish question. The parliamentary crisis was met for the moment, but only at the cost of new embitterment of the masses hostile to the Union. Moreover, in seasons of excitement, the direst threats of punishment fail to produce the anticipated effect. The French Convention, in the year of terror, threatened unruly members with expulsion, a penalty which, as a rule, placed the party concerned in sight of the revolutionary tribunal and the guillotine. Nevertheless the most fearful tumults arose in the assembly, and an incredibly rough and brutal tone prevailed, which the nearness of the scaffold did not soften in the slightest.

There is therefore no guarantee that by changing the rules of order obstruction will everywhere be suppressed. All depends in the single case on the degree of soundness possessed by the body of the people. If a people is in a condition of internal disorder, split apart by incurable antagonisms, then obstruction is only a symptom of the general social disease; and it is certain that a

disease is not to be cured by getting rid of a single symptom. But if, in spite of all the party divisions which are inevitably connected with modern social relations, there exists a national life that moves along normal lines, then obstruction, notwithstanding the momentary excitement which such a struggle begets, can be overcome without great trouble. The outcome of the recent obstruction in the German Reichstag makes this apparent. The Social Democrats decidedly overestimated the strength and energy of their popular backing. However unsatisfactory the attitude of the majority in the Reichstag on the tariff question was to a not inconsiderable part of the people, no one possessed of political insight could for a moment apprehend an outbreak of popular passion, transcending the bounds of vigorous discussion, which could have moved the majority to abstain from its proposed amendment and interpretation of the order of business. The Social Democrats were playing a game lost at the start. Their gain consisted in the great increase of votes which fell to them in the last election; but they would certainly have gotten these without the obstruction. The permanent result of their obstruction was the amendment of the order of business to the disadvantage of the minority; and in this respect their obstruction has left enduring wounds. It is certainly very doubtful whether a new attempt at obstruction in the Reichstag will soon be undertaken; for every unsuccessful obstruction is, for those who are defeated, a serious political blunder.

In those states where a stubborn obstruction is not combated by amendment of the order of business, results follow, nevertheless, similar to those in the states of the first group. A crippled parliament in no wise signifies a crippled state. If the state has a fairly strong administration, the administration will do what must needs be done without parliament; and for government under parliamentary control absolute government will be substituted, thinly veiled at best under constitutional formalities. In Austria a legal basis for such government has been found in the "emergency ordinance," which has assumed an importance not in the least anticipated by the framers of section 14 of the amended *Reichsratsstatut* of 1867. But if such a safety-valve is wanting in the constitutional law of a state, then will a strong administration

nevertheless act, if need arises, on its own responsibility and afterwards ask parliament for a bill of indemnity, a thing it is sure of, provided it has an undoubted majority behind it. If, however, obstruction continues to rage, if it hinders the vote of indemnity, there is no one at all who can hold the government to its theoretical responsibility. In other cases, where the government is weak, or where the majority backing it is loosely united or for other reasons shaky, it will seek to purchase peace by concessions to the obstructing minority. By such a course, however, normal conditions are never restored; the only result is to increase the greed of the obstructionist parties. A state can stand that sort of thing so long as the foundations of its existence are not disturbed. But if vital political interests are at stake, and the government is not able, with the help of the majority, to overcome the obstruction, then there arises a complete confusion of all relations, which cannot be adjusted until out of the chaos, either from above or from below, a new power emerges and, regardless of other considerations restores authority.

In the world-historic struggle between power and freedom, obstruction is no ally of freedom. It serves *imperium*, not *libertas*, since it destroys the foundations of political liberty. The relation between the two pillars that support the modern state, the government and the representation of the people, is such that when one pillar is weakened the carrying strength of the other must be increased, or the whole structure collapses.

A strengthening of governmental power to the point of permanent absolutism is to-day impossible. Should parliaments show themselves incapable of fulfilling their mission; should they, on the one hand, fail to give effect to the principle of majority rule, or should they, on the other hand, through rules of procedure that fetter the spirit, degrade themselves to obsequious servants of the government of the day; it is certain that in the end new forms will be found in which the people may voice its will. The heir, though still in the cradle, is already born. The Swiss and the Americans have already constructed an institution which, for the present, supplements parliamentary representation. It is the referendum, the immediate decision of the people, in its various forms. Against the referendum no obstruction is possible; nor is

there the same reason for obstruction, since all possible proposals of the minority may be submitted to the people. Thus, finally, may obstruction pave the way for an absolutism wholly different in kind from that of the past, the absolutism of the people — an absolutism which will probably show itself less favorably inclined towards a healthy social evolution than was the unlimited rule of the princes in the days of the *Aufklärung*.

Thus, for many a state, obstruction opens glimpses into a distant future, which he alone can regard as thoroughly pleasing, for whom the modern optimistic dogma of the uninterrupted progress of all things human has become an immovable conviction.

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THE ATTITUDE OF AMERICAN COURTS TOWARDS RESTRICTIVE LABOR LAWS.

ATTENTION has frequently been called to the tendency of written constitutions to limit the field for experimental legislation. In no department of law-making has this seemed to be more the case in the United States than in that pertaining to labor. While the Parliament of Great Britain has continuously expanded the labor code by adding each session some new regulation, the efforts in the same direction of American state legislatures have again and again been balked by the decision of the courts that their enactments were unconstitutional. This has been unfortunate, not only because it has at times prevented the enforcement of wise regulations, but also because it has implanted in the minds of workingmen a thorough distrust of the courts. Workingmen are not usually able to follow the subtle reasoning on which judicial decisions rest, and when they observe laws designed for their protection repeatedly nullified by the courts they soon come to believe that the latter are opposed to the cause of labor.

It is the purpose of this article to review recent decisions involving the question of the constitutionality of restrictive labor laws, in order to determine whether the courts are really so bound by our written constitutions as some of these decisions seem to imply. I may say, at once, that the conclusion to which I have been brought is that under the flexible provisions of our constitutions the question of the constitutionality of a restrictive labor law is inseparably connected with the question of the wisdom of such a law. In other words, granted that a restriction is wise under the given conditions, it is an easy task to prove that it is also constitutional. If this view is correct no amendments to American constitutions will be needed to provide the country with as comprehensive labor codes as are found abroad. All that will be required is the conversion of American judges to belief in the beneficence of this species of legislation.

A review of cases in which labor laws have been declared un-

constitutional shows that the decisions rest nearly always either on the ground that such laws interfere with the freedom of contract, or on the ground that they involve special or class legislation. Two illustrations will make this clear. In 1881 the legislature of Pennsylvania enacted a law prohibiting the practice, then common in the mining districts of the state, of paying wages in orders for goods against a company store. In passing upon this act five years later the supreme court of the state used the following language:

These sections are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do what in this country can not be done; that is, prevent persons who are *sui juris* from making their own contracts. They are an infringement alike of the right of the employer and the employee; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void.¹

From the vigorous language of this decision one would be led to infer, as the court in fact declares, that no law which prevented "persons who are *sui juris* from making their own contracts" could be constitutional. How far this is from the truth, will appear as we review later decisions.

An illustration of a labor law declared unconstitutional on the ground that it was special or class legislation is furnished by the records of the supreme court of California. The legislature of that state passed, in 1895, a law prohibiting the labor of barbers on Sundays and holidays after twelve o'clock noon. A case involving this act came before the supreme court of the state in the following year, when it was thus characterized:

By this law the laboring barber, engaged in a most respectable, useful and cleanly pursuit, is singled out from the thousands of his fellows in other employments and told that, willy nilly, he shall not work upon

¹ Godcharles & Company v. Wigeman, 113 Pennsylvania State Reports, p. 431.

holidays and Sundays after twelve o'clock noon. His wishes, tastes or necessities are not consulted. If he labors, he is a criminal. Such protection to labor, carried a little further, would send him from the jail to the poorhouse. How comes it that the legislative eye was so keen to discern the needs of the oppressed barber, and yet was blind to his toiling brethren in other vocations? Steam-car and street-car operatives toil through long and weary Sunday hours; so do mill and factory hands. There is no Sunday period of rest and no protection for the overworked employees of our daily papers. Do these not need rest and protection? The bare suggestion of these considerations shows the injustice and inequality of this law. In brief, whether or not a general law to promote rest from labor in all business vocations may be upheld as within the due exercise of the police power as imposing for its welfare a needed period of repose upon the whole community, a law such as this certainly cannot. A law is not always general because it operates upon all within a class. There must be back of that a substantial reason why it is made to operate only upon a class, and not generally upon all.¹

This decision is less sweeping than that previously cited. It recognizes that the right to work on Sundays and holidays may be restricted by the legislature in the exercise of its police power. It also recognizes that a law applying only to a class may be sustained, if there is apparent to the court some sound reason for limiting it to the class. In the case at bar it finds no justification for Sunday legislation applying to barbers only, and it therefore declares such legislation unconstitutional.

Before considering the significance of these decisions, it will be well to recall the legal grounds upon which the rights freely to contract and to immunity from special or class legislation are based. The right freely to contract is not expressly guaranteed in any state constitution. It is held to be implied, however, in the "right to life, liberty, and property" which is made prominent in all of them. Thus as defined by the courts, "liberty" means, to quote from a recent Illinois decision,

not only freedom of the citizen from servitude and restraint, but . . . the right of every man to be free in the use of his powers and faculties,

¹ *Ex parte Jentzsch*, 44 Pacific Reporter, p. 803. Useful abstracts of this decision and of many of those which follow will be found in the Bulletins of the United States Bureau of Labor.

and to adopt and pursue such vocation or calling as he may choose, subject only to the restraints necessary to secure the common welfare. . . . Property, in its broader sense, is not the physical thing which may be the subject of ownership, but is the right of dominion, possession and power of disposition which may be acquired over it. And the right of property preserved by the constitution is the right not only to possess and enjoy it, but to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen in the exercise of the liberty guarantied may choose to adopt. Labor is the foundation of all wealth. The property which each one has in his labor is the common heritage. And, as an incident to the right of acquiring property, the liberty to enter into contracts by which labor may be employed in such way as the laborer may deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty.¹

"The privilege of contracting" is thus, as was affirmed by the same court in a later decision, "both a liberty and a property right."² The prohibition of special or class legislation is explicit in all of the state constitutions. There can therefore be no doubt of the universality of these rights in the American commonwealths. Moreover, the first section of the fourteenth amendment of the federal constitution is quite generally held to protect these fundamental rights as among the "privileges and immunities of citizens of the United States," disregard of which is inconsistent with "due process of law." This is important chiefly because it makes possible an appeal to the United States supreme court when these rights are infringed, and has enabled that tribunal to lay down certain very important principles in regard to the scope of the police power in connection with the regulation of labor conditions. The rights with which restrictive labor laws usually conflict are thus protected by both the state and federal constitutions. This does not mean, of course, that they are inviolable. In the exercise of its police power, a state legislature may set aside these along with other merely private rights. The question as to the constitutionality of restrictive labor laws thus reduces itself to that of the scope of the police power.

¹ *Braceville Coal Company v. The People*, 35 *Northeastern Reporter*, p. 62.
Ritchie v. People, 55 *Illinois Reports*, p. 98.

In his valuable work on *The Police Power*, Professor Freund defines it "as the power of promoting the public welfare by restraining and regulating the use of liberty and property." Helpful as this definition is as a means of distinguishing the power of police from other powers, it obviously throws little light on the scope of this power. The only way to determine whether a given statute designed to promote the public welfare is or is not a legitimate exercise of the police power is to examine the authoritative decisions in which similar statutes are involved. Confused and conflicting as are these decisions, it is believed that a study of them justifies the contention that in the field of labor restrictions the courts will sustain any measure which they think really calculated to promote the public welfare.

Attention has already been called to the decision of the supreme court of Pennsylvania that a truck act was unconstitutional because it interfered with the freedom of the workman to sell his labor and of the employer to buy it on such terms as were mutually satisfactory. We may compare this with other decisions involving the truck acts of other states. Such acts have been declared unconstitutional in Illinois, Kansas and Indiana; and have been approved or sustained in Colorado, Kentucky and Tennessee, the law of the last mentioned state being also upheld by the federal supreme court. The first two decisions, rendered in 1892 and 1899, respectively, use nearly as strong language as that of the Pennsylvania court already quoted. The supreme court of Illinois affirms that

the police power of the state is limited to enactments having reference to the comfort, the safety and the welfare of society, and under its guise a person cannot be deprived of a constitutional right. Under it an adult person of sound mind, laboring under no legal disability, cannot be deprived of the right to make contracts in respect to labor and the acquisition of property, under the pretence of giving such person protection.¹

The supreme court of Kansas is even more vigorous in its disapproval of this species of legislation. It finds fault with the

¹ *Frorer et al. v. The People*, 141 Illinois Reports, p. 171.

particular act brought before it because it applies only to "corporations or trusts employing ten or more persons." Such a limitation appears to it to involve indefensible discrimination. It also condemns the very principle of truck legislation. Among other things it declares:

Such legislation suggests the handiwork of the politician rather than the political economist. It has been sought by some judges to justify legislation of this kind upon the theory that, in the exercise of police power, a limitation necessary for the protection of one class of persons against the persecution of another class may be placed upon freedom of contract. As between persons *sui juris*, what right has the legislature to assume that one class has the need of protection against another? In this country the employee to-day may be the employer next year, and laws treating employees as subjects for such protective legislation belittle their intelligence and reflect upon their standing as free citizens. It is our boast that no class distinctions exist in this country. An interference by the legislature with the freedom of the citizen in making contracts, denying to a part of the people, possessing sound minds and memory, the right to bargain concerning the equivalent they may desire to receive as compensation for their labor, is to create or carve out a class from the body of the people and place that class within the pale of protective laws which invidiously distinguish them from other free citizens; thus dividing by arbitrary fiat equally free and intelligent people into distinctive classes or grades, the one marked by law as the object of legislative solicitude, the other not. . . . Laws which infringe upon the free exercise of the right of a workingman to trade his labor for any commodity or species of property which he may see fit, and which he may consider to be the most advantageous, are an encroachment upon his constitutional rights and an obstruction to his pursuit of happiness. Such laws as the one under consideration class him among the incompetents and degrade his calling.¹

These citations serve sufficiently to indicate the grounds upon which truck acts have been condemned.² The courts of Penn-

¹ State v. Haun, 59 Pacific Reporter, p. 340.

² The decision nullifying the truck act of Indiana need not detain us, since it was based entirely on the ground that the act applied only to employees in or about coal mines and that this was indefensible special or class legislation. The general attitude of the supreme court of Indiana is more accurately indicated by the deci-

sylvania and Illinois deny flatly the right of the legislature to interfere with the freedom of the labor contract between persons *sui juris*. The court of Kansas, rendering its decision some years later, recognizes the possibility that such interference may be justified as an exercise of the police power, but repudiates the idea that wage-earners as a class need any such protection as the truck act proposed to extend to them. It may be noted incidentally that the question as to whether by such a law the legislature "carves out a class from the body of the people," or simply recognizes the existence of a class already in being, is one not of law but of industrial fact. The truck act of Kansas may have been "the handiwork of the politician," but it is certainly misleading to imply, as does the court, that such legislation does not now enjoy the sanction of intelligent political economists.

The decisions approving truck legislation bring out clearly the economic arguments in favor of such interference. In replying to an interrogatory formally addressed to it by the state legislature the supreme court of Colorado declared on March 30, 1897, that

a majority of the court are of the opinion that the legislature may, in the exercise of its police power, enact laws of this character when necessary to prevent oppression and fraud, and for the protection of classes of individuals against unconscionable dealings.¹

And it continues:

We may properly take cognizance of the fact that the most serious disturbances which have occurred in this country for the last twenty-five years have grown out of controversies between employer and employee. No one doubts the authority or questions the duty of the state to interfere with such force as may be necessary to repress such disturbances and maintain the public peace and tranquillity;

sion it handed down on the same day (Nov. 25, 1902) as that involving the truck act, upholding the constitutionality of a law prohibiting the assignment of future wages on the ground that "the situation of [wage-earners] renders them peculiarly liable to imposition and injustice at the hand of employers, unscrupulous tradesmen and others who are willing to take advantage of their condition." (65 *North-eastern Reporter*, p. 521.)

¹ 48 *Pacific Reporter*, p. 512.

and as well may the state provide in advance against certain kinds of fraud and oppression which lead to these outbreaks.

The supreme court of Kentucky sustained on September 27, 1900, the act of that state which requires "that all persons, associations, companies and corporations employing the service of ten or more persons in any mining work" in the state shall on or before the 16th of each month pay in full in lawful money the wages agreed upon for the previous month. The requirement that wages be paid in lawful money was not in question in this decision, because Kentucky had embodied a truck clause in her constitution.¹ The affirmation that limiting the act to enterprises employing ten or more persons did not render it special legislation is, however, in interesting contrast with the contrary view of the supreme court of Kansas. The Kentucky tribunal says:

We think the classification or apparent discrimination made in the statute is permissible, because it is natural and reasonable and, moreover, entirely consistent with the end sought to be accomplished by the organic law. The abuse sought to be corrected was the imposition practised on the miners by the operators of mines by forcing them, directly or indirectly, into dealing with the "company stores," where goods at exorbitant prices were paid for wages instead of money. This evil can hardly be practised at small concerns, or where less than ten miners are employed. In effect, the lawmakers said there is in small concerns using less than ten men practically no such evil as the constitution seeks to suppress; therefore we ignore the small concerns, and apply the benefit of the constitutional provision to that portion of the class only which needs the benefit.²

This seems to be a conclusive answer to the objection that such a limitation involves special legislation.

The most exhaustive decision sustaining a truck act is that rendered by the supreme court of Tennessee on November 8, 1899. The act in question differs from the ordinary prohibition of payment of wages in scrip or in orders on a company

¹ Section 244: "All wage-earners in this state employed in factories, mines, workshops, or by corporations shall be paid for their labor in lawful money."

² 58 Southwestern Reporter, p. 441.

store in that it seeks to attain the same end by requiring employers paying in "orders" of any sort to redeem the latter in lawful money on demand.¹ After explaining at length the significance of the phrases "law of the land" and "due process of law" contained in the state and federal constitutions, the court says:

The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure by enabling him, or his *bona fide* transferee at his election, and at a proper time, to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employee upon equal ground in the matter of wages, and, so far as calculated to accomplish that end, it deserves commendation. . . .

Furthermore, the passage of the act was a legitimate exercise of the police power, and upon this ground also the legislation is well sustained. . . . Besides the amelioration of the employee's condition, the act was intended and is well calculated to promote the public peace and good order and to lessen the growing tendency to strife, violence and even bloodshed in certain departments of important trade and business.

. . . Such being the character and tendency of the act, we have no hesitation in holding that it is valid, both as general legislation, without reference to the state's reserved police power, and also as a wholesome regulation adopted in the proper exercise of that power.²

The reasoning of this decision is all the more significant, because when the case was appealed to the federal supreme court that tribunal declared that "the supreme court of Tennessee justified its conclusions by so full and satisfactory a reference to the decisions of this court as to render it unnecessary for us to travel over the same ground"³ and itself sustained the law.

A comparison of these different decisions appears to justify the conclusion that the constitutionality of truck legislation depends upon the reality of the abuses that such legislation is intended to correct. If, as a matter of fact, workmen constitute a class in the community that needs special protection because specially exposed to unfair treatment by unscrupulous employers, the high-sounding

¹ Act of March 23, 1899.

² 53 Southwestern Reporter, p. 955.

³ Oct. 21, 1901, 22 Supreme Court Reporter, p. 1.

phrases of the Kansas decision lose all point. If, as a matter of fact, the company-store abuse is the cause of "strife, violence, and even bloodshed" between workmen and employers, the police power may be called in to suppress it. If, finally, as a matter of fact, these evils arise only where enterprises employ ten or more men, then limiting the prohibition to such enterprises is a reasonable and proper restriction, not open to the constitutional objection that it involves special or class legislation. In the earlier decisions cited the courts were vehement in their condemnation of attempts to restrain freedom of contract in reference to wages; but at the same time they were enforcing, as a matter of course, usury laws imposing even more drastic restrictions upon freedom of contract with reference to interest. The latter were approved because their utility was appreciated. The former were condemned because the judges had in mind the conditions of an earlier industrial society in which wage-earners were not a class by themselves and consequently were not in need of special protection. As the need of such restrictions becomes manifest, may we not be certain that doubts in regard to their constitutionality will vanish?

The Sunday labor of barbers has been the frequent object of legislative solicitude. In the decision cited the California statute limiting such labor was declared unconstitutional on the ground that it involved special or class legislation. Similar measures have been condemned on the same ground in Missouri,¹ Illinois² and Washington.³ In New York, Michigan, Tennessee, Minnesota and Oregon, on the other hand, the state legislatures have been upheld in enacting Sunday closing laws applying only or in a special way to barbers. Moreover, the United States supreme court has upheld such legislation in a case appealed to it under the Minnesota law. The arguments in support of Sunday laws applying only to barbers will appear from a few extracts from these decisions.

In rendering its decision the New York court of appeals used the following language:

¹ Act of March 18, 1895, in *State v. Grauneman*, 33 Southwestern Reporter, p. 784.

² Act of June 26, 1895, in *Eden v. People*, 43 Northwestern Reporter, p. 1109.

³ Ordinance of City of Tacoma, 46 Pacific Reporter, p. 255.

It is to the interest of the state to have strong, robust, healthy citizens, capable of self-support, of bearing arms, and of adding to the resources of the country. Laws to effect this purpose, by protecting the citizen from over-work and requiring a general day of rest to restore his strength and preserve his health, have an obvious connection with the public welfare. . . . As barbers generally work more hours each day than most men, the legislature may well have concluded that legislation was necessary for the protection of their health. We think that this statute was intended and is adapted to promote the public health, and thereby to serve a public purpose of the utmost importance.¹

It is, therefore, the court concluded, a legitimate exercise of the police power.

The Minnesota act was peculiar in that it prohibited all Sunday labor except works of necessity or charity and added, "provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity." In passing on the question whether this proviso did not involve special or class legislation the supreme court of the state said:

The object of the law was not to interfere with those who wish to be shaved on Sunday, or primarily to protect the proprietors of barber shops, but mainly to protect the employees in them by insuring them a day of rest. . . . Courts will take judicial notice of the fact that, in view of the custom to keep barber shops open in the evening as well as in the day, the employees in them work more, and during later, hours than those engaged in most other occupations, and that this is especially true on Saturday afternoons and evenings; also that, owing to the habit of so many men to postpone getting shaved until Sunday, if such shops were to be permitted to be kept open on Sunday the employees would ordinarily be deprived of rest during half of that day. In view of all these facts we cannot say that the legislature has exceeded the limits of its legislative police power in declaring that, as a matter of law, keeping barber shops open on Sunday is not a work of necessity or charity.²

The decision of the federal supreme court added nothing to this

¹ *People v. Havnor*, 43 *Northeastern Reporter*, p. 541 (Apr. 14, 1896).

² *State v. Petit*, 77 *Northwestern Reporter*, p. 225.

reasoning but gave it the weight of its authority by quoting it at length in its own opinion sustaining the law.¹ Its view was accepted as conclusive by the supreme court of Oregon, which declared, in sustaining the Sunday closing law for barbers of that state, that if the classification on which it rested is "not in conflict with the federal constitution, it is necessarily not in conflict with our own."²

A comparison of these decisions indicates the grounds on which the courts hold a statute to be or not to be special or class legislation. As Professor Freund has summarized the principle: "Where a restraint is confined to a special class of acts or occupations, that class must present the danger dealt with in a more marked and uniform degree than the classes omitted."³ In some of the states the courts have failed to see anything about the business of barbers which justifies special Sunday legislation for their protection. In other jurisdictions full weight has been given to the peculiarities of this trade: the tendency to keep open evenings and Sunday mornings to accommodate customers who might with little inconvenience come at other times and, consequently, to require excessively long hours of attendance on the part of employees. With these peculiarities in mind, one can easily answer such objections as were urged by the supreme court of California against legislation of this character.⁴ The view that it is oppressive to the barbers themselves is readily disposed of by the consideration that it is these very barbers who most eagerly desire it. It is of no advantage to them as a class to incur serious discomfort for the accommodation of customers when a little compulsion would cause these customers to come at more convenient hours. It is not the eagerness of barbers to work seven days in the week that causes their shops to be kept open on Sundays, but the pressure of an unregulated competition which they would be only too glad to restrain. The comparison of barbers with "street-car operatives" and the "employees of our *daily* newspapers" which the court suggests is quite beside the mark, for the obvious reason that in the case of the latter suspension of labor on Sun-

¹ 20 Supreme Court Reporter, p. 666 (April 9, 1900).

² 69 Pacific Reporter, p. 445 (July 7, 1902).

³ The Police Power, p. 755. ⁴ *Supra*, pp. 590, 501

days would mean not merely the concentration of work in the other days of the week but the entire deprivation of the public of services upon which its wellbeing largely depends. The fact that these classes also need "rest and protection," granting that this is the case, is no valid objection to protecting barbers by a law well adapted to their industry but not at all suited to the others mentioned. It is not necessary to follow these considerations further to show that when a law extending protection to a special class is really beneficent and equal in its operation the constitutional objections to it fall away. Here, as in the case of the truck acts already considered, the constitutional and the economic aspects of the question are so intimately related that we may be certain that a court which believes a protective law economically desirable will find it legally admissible.

Truck acts and special Sunday closing laws are measures of relatively slight moment to the people of the United States. The attention devoted to them is justified only by the importance of the principles involved in the decisions to which they have given rise. I come now to a series of decisions of quite a different character. No labor question has been more prominently before the American public in recent years than that as to the proper length of the working day. Until quite lately it has been assumed that this was a matter with which state legislatures could not interfere, except as regards minors, women and public employees. The decisions which have reversed this opinion, at least for some of the states, merit careful consideration because they have made valid more extreme protective labor laws than are yet to be found in any European country. The first law of this character to be finally sustained by the courts was the ten-hour law applying to bake-shops passed in 1895 by the legislature of New York state. Before this statute came before the courts, however, the Utah eight-hour law of 1896, applying to mines and smelters, had been sustained not only by the supreme court of that state, but by the federal supreme court. The latter legislation thus merits prior consideration.

When Utah was admitted to statehood in January, 1896, it had as one of the novel features of its constitution an article (article xvi) treating exclusively of labor. Among other things

this article directed (section 6) that "the legislature shall pass laws to provide for the health and safety of employees in factories, smelters and mines." Acting under this general authority the legislature passed during its first session a statute making eight hours a day the period of employment in mines and smelters, "except in cases of emergency where life or property is in imminent danger," and penalizing violations as misdemeanors. Test cases were brought before the supreme court of the state in the same year, and the act was sustained as regards both mines and smelters.¹ The cases were promptly appealed to the supreme court of the United States, which rendered its decision, also sustaining the law, on February 28, 1898.² The following abstract of these decisions indicates sufficiently the grounds upon which they rested.

In its first decision³ sustaining the law, so far as it applies to mines, the supreme court of Utah quotes at length from the labor article of the constitution to show that the protection of labor is one of the functions of the legislature. It then describes the nature of underground mining to show that a limitation on the hours of work for miners is a proper health measure. "We cannot say," it concludes, "that this law, limiting the hours of labor in underground mines to eight hours each day, is not calculated to promote health." Turning, then, to the question whether the act interferes with constitutional rights, it justifies the measure as imposing a proper restraint on personal liberty and as free from the taint of special or class legislation. "Some pursuits," it declares,

are attended with peculiar hazards and perils, the injurious consequences from which may be largely prevented by precautionary means, and laws may be passed calculated to protect the classes of people engaged in such pursuits. It is not necessary to extend the protection to persons engaged in other pursuits not attended with similar dangers. To them the law would be inappropriate and idle. So, if underground mining is attended with dangers peculiar to it, laws

¹ *Holden v. Hardy* (Oct. 29, 1896), 46 *Pacific Reporter*, p. 756; *State v. Holden* (Nov. 11, 1896), 46 *Pacific Reporter*, p. 1105.

² *Holden v. Hardy*, 18 *Supreme Court Reporter*, p. 383.

³ 46 *Pacific Reporter*, p. 756.

adapted to the protection of such miners from such danger should be confined to that class of mining, and should not include other employments not subject to them.

Believing this to be the case, the court upholds the law. Finally, it shows by citations from the decisions of other courts that the act may be defended as a legitimate exercise of the police power.

The second decision¹ of the Utah court sustains, by a similar line of reasoning, the part of the act applying to smelters. It alludes briefly to the noxious gases that must be inhaled by persons engaged in this industry and concludes that a restriction on the hours of employment is a proper health regulation. "Twelve hours a day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight. Such a period was deemed reasonable." After a brief reference to the peculiar constitutional provisions of Utah in regard to labor, it adds:

Nor do we wish to be understood as intimating that the power to pass the law does not exist in the police powers of the state. The authority to pass laws calculated and adapted to the promotion of the health, safety or comfort of the people, and to secure the good order of society and the general welfare, undoubtedly is found in such police powers.

The act may thus be defended as consonant with the labor article of the state's constitution and also as a legitimate exercise of the police power, shared by all the states.

The decision of the federal supreme court affirming the judgments of the supreme court of Utah was delivered by Mr. Justice Brown, Justices Brewer and Peckham dissenting. It is especially valuable because it presents a comprehensive review of earlier decisions interpreting the fourteenth amendment and outlining the scope of the police power of the states. The parts immediately applicable to the Utah statute are summarized in the following extracts.

After showing that the mining industry has long been recognized as one requiring regulation to protect the lives of miners, it continues:

¹ 46 Pacific Reporter, p. 1105.

But if it be within the power of the legislature to adopt such means for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. . . . With this end in view . . . laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the states, they have been generally upheld. . . . Upon the principles above stated, we think the act may be sustained as a valid exercise of the police power of the state. . . . [The employments of mining and smelting], when too long pursued, the legislature has judged to be detrimental to the health of the employees; and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the federal courts. While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operator is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature or to the influence of noxious gases generated by the processes of refining or smelting.¹

It then quotes with approval a considerable part of the decision of the Utah court in the second case referred to above, closing with the sentence:

Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government.

Continuing it says:

The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would

¹ 18 Supreme Court Reporter, pp. 383 *et seq.*

pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defence is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the state must suffer.

The federal supreme court thus not only endorses the reasoning of the supreme court of Utah at every point, but it adds important considerations of its own, all favorable to the constitutionality of the statute. It recognizes that mining and smelting are peculiarly dangerous and unhealthful employments. It sees no reason why the police power should not embrace the protection of health and morals as well as that of life and property. It approves of restrictions on hours as means of protecting health. On these grounds the act is well sustained. But it goes further. It believes that large discretion in the exercise of the police power should be left to the legislative branch of the government; that employers and employees sometimes bargain on unequal terms and that at such times the legislature may properly interfere; finally, that the legislature has the right, when this is the case, to protect a man even "against himself."

In laying down the above principles the court had in mind, of course, the limitations imposed by the fourteenth amendment, not those contained in the state constitutions. How little immediate influence its reasoning had upon the minds of some of the judges of the state courts was illustrated a year later (July 17

1899), when the supreme court of Colorado rendered a decision declaring unconstitutional an act copied word for word from the Utah eight-hour law. A brief summary of this decision¹ will show that, at least at one point, the Colorado court disagrees in principle with the United States supreme court.

At the outset the decision alludes to the history of the Utah statute, but tries to minimize the significance of the decisions sustaining it by connecting them with the peculiar provisions of Utah's constitution. After pointing out that there are no similar provisions in the constitution of Colorado, it proceeds to demonstrate that such a law is not a legitimate exercise of the police power by the following reasoning:

Were the object of the act to protect the public health, and its provisions reasonably appropriate to that end, it might be sustained; for in such a case even the constitutional right of contract may be reasonably limited. But the act before us is not of that character. In selecting a subject for the exercise of the police power, the legislature must keep within its true scope. The reason for the existence of the power rests upon the theory that one must so use his own as not to injure the public health, safety, morals or general welfare. How can an alleged law that purports to be the result of an exercise of the police power be such in reality when it has for its only object, not the protection of others, or the public health, safety, morals or general welfare, but the welfare of him whose act is prohibited, when, if committed, it will injure him who commits it, and him only?

That this view is squarely opposed to that of the United States supreme court that the legislature may protect a man even "against himself" is obvious. As Professor Freund says, in commenting upon the above decision:

The right to choose one course of action even to the extent of incurring risks, where others are not concerned, is a part of individual lib-

¹ 58 Pacific Reporter, p. 1071. The sequel of this decision was an amendment to the Colorado constitution expressly conferring upon the legislature the power which the state supreme court denied to it. This was submitted to the people on March 14, 1901, and adopted the following year. How close a connection this embittered struggle to secure the eight-hour day may have had with the sanguinary labor troubles from which Colorado has recently suffered, only those on the ground can judge.

erty. . . . It is, however, a fallacy to transfer this argument from the individual to the particular class, and to say that the police power has no business to protect the class against its own acts. . . . If the health of the class is impaired by long hours of work under unsanitary conditions, a public interest exists which may set the police power in motion.¹

In other states than Colorado the influence of the federal decision has been more marked. In at least four instances it has been accepted as determining, and laws restricting the hours of labor of adult men in special employments have been sustained. The first of these is a law of Missouri, passed March 23, 1901, which forbids the employment of persons in underground mines for more than eight hours a day. With it should be grouped as a second instance the eight-hour law applying to underground mines and smelters passed by the state of Nevada on February 23, 1903. These statutes are so similar to that of Utah that no new considerations are brought out in the decisions² upholding them. The third instance is a law of Rhode Island, passed April 4, 1902, which limits the hours of street railway employees to ten a day. As the supreme court of that state declared, if the Utah law is a legitimate exercise of the police power, the Rhode Island statute "is more clearly within such power, for the triple reason that it deals with public corporations, the use of a public franchise, and a provision for public safety."³

The fourth instance is the more significant New York law limiting the hours of employment in bake-shops in that state to ten a day. This is more nearly parallel with the Utah law, and the decision of the court of appeals sustaining it, which was rendered on January 12, 1904, has been justly heralded as "one of the most important decisions handed down by [that tribunal] in recent years."⁴ The facts that it was reached by the close vote of four to three and that five of the seven judges sitting saw

¹ The Police Power, p. 142.

² *State v. Cantwell et al.*, 78 Southwestern Reporter, p. 569; *in re Boyce*, 75 Pacific Reporter, p. 1.

³ July 27, 1902, 54 Atlantic Reporter, p. 602.

⁴ *People v. Lochner*, 177 N. Y. Reporter, p. 145. A good summary of this decision is given in the Bulletin of the New York Department of Labor, March, 1904, pp. 37-43.

fit to hand down opinions, which together fill forty-four pages of the official record, add to its interest. A brief summary will suffice to indicate the grounds upon which the decision rested.

Chief Judge Parker, speaking for the majority of the court, prefaces his opinion with a review of the decisions outlining the scope of the police power similar to that in the federal decision on the Utah case. Coming to the question at bar, he continues:

It can be safely said that the family of to-day is more dependent upon the baker for the necessities of life than upon any other source of supply. This being so it is within the police power of the legislature to so regulate the conduct of that business as to best promote and protect the health of the community. . . . Why should any one question the object of the legislature in providing . . . that "no employee shall be required or permitted to work" in such an establishment "more than sixty hours in any one week," an average of ten hours for each working day? It is but reasonable to assume from this statute as a whole that the legislature had in mind that the health and cleanliness of the workers, as well as the cleanliness of the work-rooms, was of the utmost importance, and that a man is more likely to be careful and cleanly when well, and not overworked, than when exhausted by fatigue, which makes for careless and slovenly habits and tends to dirt and disease. If there is opportunity — and who can doubt it? — for this view, then the legislature had the power to enact as it did, and the courts are bound to sustain its action as justified by the police power.

After referring to the decision in the Utah case and pointing out that it is "controlling so far as the fourteenth amendment is concerned, and should be controlling in this court so far as equivalent provisions of our state constitution are concerned," he goes on to say:

It must also be held, under the authority of *Havnor's case*¹ — even though it may be assumed from the reading of the statute that the object of the legislature is to protect employees in such establishments from working more than ten hours a day — that it is within the police power and therefore not repugnant to the state constitution. . . . Many medical authorities classify workers in bakers' and confection-

¹ This was the case under the Sunday closing law applying to barbers already referred to, *supra*, p. 599.

ers' establishments with potters, stone-cutters, file-grinders, and other workers whose occupation necessitates the inhalation of dust particles and hence predisposes its members to consumption.

In view of this fact it may reasonably be regarded as a dangerous trade requiring special regulation.

This latter aspect of the case, which brings it into the same class as the Utah statute, is made prominent also in the concurring opinion of Judge Vann. He says:

The evidence, while not uniform, leads to the conclusion that the occupation of the baker or confectioner is unhealthy and tends to result in diseases of the respiratory organs. As statutes are valid which provide that women or children shall not be employed in any manufacturing establishment more than a certain number of hours in a single day, so I think an act is valid which provides that in an employment which the legislature deems, and which is, in fact, to some extent, detrimental to health, no person, regardless of age or sex, shall be permitted or required to labor more than a certain number of hours per day or week. Such legislation under such circumstances is a health law and is a valid exercise of the police power.

The limitation of work in bake-shops to ten hours a day or sixty hours a week is thus justified as a health law whether it be looked at as a means of securing greater cleanliness in such establishments, and thus protecting the public health, or whether it be regarded merely as a means of protecting the health of the over-worked bakers themselves.

A comparison of these decisions shows that they open an indefinitely large field to the exercise of the police power in the regulation of hours of labor. If a limitation of hours to ten a day for bakers can be justified as a means of protecting the community's bread, manifestly a large number of trades may be subjected to similar restrictions. It is certainly as important to the community to have its butchers, its cooks, and the thousands of employees of its transportation companies "well and not over-worked" as to have its bakers so. If the hours of those employed in mines and smelters may be limited to eight a day for the reason that longer hours are detrimental to health, what ground remains for opposing reasonable restrictions on hours

in any employments? It is incontestable that excessive hours of work of any kind are injurious to health. If a broad view be taken, it must be conceded that the full vigor and efficiency of the classes that work predominantly with their hands can only be maintained if time is given them for mental exercise. It is even more true that the best health of brain workers demands a definite period each day for muscular development. For these reasons, if the argument of the federal supreme court in the Utah case be generally accepted, may not the courts be relied upon to give an ever wider field to legislative discretion in this department of labor regulation? May not any restriction on hours which is defensible on economic grounds be properly characterized as a reasonable health measure and therefore brought within the pale of the police power? As regards this important class of regulations, also, the contention that the question of constitutionality is merely another phase of the question of economic expediency appears to be abundantly justified.

Space will not permit a discussion of other classes of restrictive labor laws. The same principles which have caused the courts to withdraw their opposition to truck acts, special Sunday closing laws for barbers, and acts restricting hours in special employments, are leading them to admit a large number of other measures within the pale of the police power. The legal phrases used — that the purpose of the act must be to protect the health or morals of the community, that it must be based on a reasonable classification, *etc.* — merely disguise the fact that to the courts, as presumably to the legislatures which enact the laws, the really decisive consideration is whether the restrictions are calculated to promote the general welfare. The chief difference is that the courts — at least nominally — withdraw their opposition when they are convinced that a good presumptive case can be made out for the law on the ground that the ultimate determination as to whether it is expedient or not belongs to the legislature, while the latter body in passing the law registers its view that the measure *is* expedient.

I have not attempted to discuss in this article the merits or demerits of the various laws that have been referred to. Many economists would not approve of the recommendation of the

United States Industrial Commission that "the [labor] provisions of the Utah constitution and statutes be followed in all the states,"¹ so that the eight-hour day for men employed in underground mines may become universal. All will agree, however, that we are much in need of further experience of the effect of regulations of this sort. Here as elsewhere it is only through experiment that the continually recurring differences between advocates of government regulation and of the *laissez-faire* policy can be adjusted. On this account the growing liberality of American courts in the scope they concede to the legislative police power should be ground for general satisfaction.

HENRY R. SEAGER.

¹ Report of the Industrial Commission, vol. v, p. 4.

THE FINANCES OF THE TEXAS REVOLUTION.

ONE is puzzled to know whence came the revenues of Texas while a part of the Mexican confederacy. The constitution of Coahuila and Texas provided, indeed, that "the taxes of the individuals composing the state shall form its public revenue," and it can be gathered from the laws and decrees of the state that its inhabitants were subject to several sorts of taxes — stamped paper for legal documents, dues on land, an income tax and an excise, not to speak of customs duties. But though the workings of the fiscal system are far from clear, it is certain that numerous exemptions were granted from some of the taxes and that a great deal of liberty was allowed in the payment of others, so that there was surely no considerable income derived from these sources. When the revolution began, therefore, not only was there very little public money in the country, but the machinery of collection was stiff with inaction and poorly adapted to the important work of bringing in quick returns. And added to this, the resources of Texas were not of the sort to be readily converted into the sinews of war.

Under these conditions, then, how were the Texans enabled to establish a government, maintain an army and accomplish their independence? Mr. Henry M. Morfit declared to Secretary Forsyth that the means were derived principally "from the sympathy of their neighbors and friends in the United States and by loans upon the credit of the state,"¹ while Mr. Gouge, in his *Fiscal History of Texas*,² somewhat facetiously remarks that the various expedients of governments for raising funds in such exigencies may be resolved into "taxing, borrowing, begging, selling, and robbing and cheating," and that the Texans apparently determined to try all six. Before investigating this question it will be necessary to outline briefly the political changes in Texas during the revolution.

When hostilities began at Gonzales (October 2, 1835), procla-

¹ Morfit to Forsyth, September 4, 1836, in House Executive Document, 24th Cong., 2d Sess., no. 35, p. 16.

² P. 24.

mations had already been issued for the election of delegates to a general consultation, which was to meet at San Felipe on October 16. Until this could assemble, the direction of affairs was assumed by a committee of five, composed of Messrs. William Pettus, Gail Borden, R. R. Royall, Joseph Bryan and C. B. Stewart. They organized themselves on the 11th into the permanent council and elected Mr. Royall president. Five days later, when the consultation should have convened, it was found that most of the members-elect had joined the army then marching on San Antonio. Since a quorum could not be obtained, an adjournment was taken to November 1 and a number of the members present, upon invitation, united with the permanent council. The council then acted as a sort of executive committee until the consultation was formally organized and relieved them of their duties. After a session of ten days the consultation provided for the organization of a provisional government, consisting of a governor, a lieutenant-governor and a council, and, bequeathing its problems to them, adjourned until the first of March. Before the day of their reassembling, however, there had been developed an almost unanimous desire for separation from Mexico, and new delegates were chosen with plenary powers to devise a permanent government. On the second of March they made a declaration of independence, and on the seventeenth adopted a constitution. Pending the ratification of this by the people, the convention appointed David G. Burnet president *ad interim*, and adjourned.

In view of these frequent changes one could hardly expect a settled financial policy to be developed. Measures looking toward the raising of revenue were necessarily experimental, and fortunately the revolution was over before it was proved that most of them were failures.

The permanent council was short-lived and lacked authority. The most that it could do was to make an effort to look after the immediate necessities of the few hundred volunteers who had taken the field. For this purpose, on October 14, William Hall was appointed "contractor for the army of the people," and instructed to begin contracting immediately for such things as were

needed. He was to give his official receipt for supplies obtained, and upon refusal of parties of the second part to relinquish their goods on such terms, he was authorized to "press into service any valuables that may be necessary to a speedy and prompt coöperation with our forces at headquarters." On the same day the council borrowed \$100 from James Cochran, and used it in the transportation of some "artillery" from Columbia to the army. The loan was to be repaid from funds in the hands of J. H. Money, treasurer of the municipality of San Felipe de Austin. Cochran consented to make additional advances on the same security, so that the council, in ordering the next day supplies of coffee, sugar and salt for the army, were able to assure the grocer that they had "some funds." In the end Cochran's loans reached the amount of \$280, and this with \$58.30 from land dues in the hands of Mr. Gail Borden and an advance of \$36 by the president, seems to have been all the money handled by the permanent council.¹

On the 20th, the appointment of a committee of five was moved "to inquire into the state of the public funds and, if necessary, report a plan for replenishing them." The committee was forthwith appointed, and recommended that six "public agents" be appointed to coöperate with the committees of safety in each jurisdiction in the collection of dues on land and stamped paper. They were also to negotiate loans whenever possible, and pledge as security therefor the public faith.² On the 22d Borden's powers were strengthened as collector in the jurisdiction of San Felipe, and he was instructed to publish a notice that drafts drawn by captains of companies — presumably for supplies — and approved by the president of the council would be accepted in payment thereof. It is likely that this was suggested by the committee.

On the 27th a more ambitious effort was made to secure funds by the appointment of Thomas F. McKinney to negotiate a loan of \$100,000 in New Orleans.³ But from this undertaking he

¹ Journal of the Proceedings of the Consultation, 11.

² *Quarterly of the Texas State Historical Association*, vii, 267.

³ Royall to Austin, October 27, 1835. Austin Papers, N 20. Royall declared himself skeptical of McKinney's success, in case he accepted the commission, for the reason that sentiment in the United States as a condition of assist-

excused himself on the ground that such a commission would need to be supported by unquestionable authority, which he feared would not be conceded to the permanent council.¹ Before this reply was received the council had merged into the consultation, to which it reported the result of its fortnight's labors, receiving therefor a vote of thanks. The sum of \$374.30 had been expended, provision had been made for the efficient collection of the public dues, and supplies were on the way to the army. These consisted of "upwards of a hundred beeves, a considerable quantity of corn meal, and sugar, coffee, bacon, blankets, shoes and tent cloths."²

The consultation's tenure of power was even briefer than that of the permanent council. It first secured a quorum November 3, and adjourned on the 14th. When the call was issued for the assembly in August, it was expected that the principal work of the delegates would be to consult upon the attitude which Texas should take toward the centralizing measures of Santa Anna. This question, however, the rapid development of events had already determined, and it was quite a different program that was submitted to them. In his inaugural address the chairman, Dr. Branch T. Archer, suggested that they should confine their attention mainly to three things : they should promulgate and publish to the world the reasons why they had taken up arms and the objects for which they were fighting; they should consider the propriety of creating a provisional government; and they should secure the organization of a military system. Money, he said, would of course be needed for this, and agents should be ap-

ance in loans seemed to favor a declaration of independence, while the Texans at this time were determined upon allegiance to the federal constitution of 1824. But he consoled himself with the hope that at any rate volunteers and contributions might be obtained.

¹ McKinney to Royall, October 31, 1835. Archives of Texas, diplomatic correspondence, file 14, no. 1337. If upon its meeting the consultation saw fit to appoint him agent, McKinney said that he would be glad to serve. In the meantime, he thought the immediate necessities of the army could be supplied by the firm of McKinney & Williams and other local merchants.

² Journal of the Proceedings of the Consultation, 11, 12. For the paragraph in general, see the journal of the permanent council in the *Quarterly of the Texas State Historical Association*, vii, 249-278.

pointed to get it. The first proposal was easily carried out, and the declaration was issued on the 7th; but the second was of greater magnitude, and occupied them throughout their session; while the third they passed on to their successors practically untouched.

In fact, the actual financial affairs of the consultation were scarcely more important than those of the permanent council. On the morning of the 6th, five members were appointed to provide for the necessities of the army, with authority "to borrow money or originate other debts for that purpose," and in the afternoon they reported a loan of \$500 obtained from Thomas F. McKinney. Of this, \$238 had been expended in paying drafts already drawn on the government, \$20 was used in forwarding an express, and a balance of \$242 remained in their hands. The following day the consultation declared "that Texas is responsible for the expenses of her armies now in the field, that the public faith of Texas is pledged for the payment of any debts contracted by her agents," and "that she will reward by donations in land all who volunteer their services in her present struggle;" but for practical purposes this meant little more than the expression of a willing spirit to meet her obligations if she were able.

At the same time a windfall arrived in the shape of a contribution from New Orleans. Mr. Edward Hall brought the news on the 6th that a committee in that city had raised \$7,000 for the benefit of Texas. Half of it had been employed in equipping and transporting volunteers, but the balance, rapidly growing by other donations, was retained by the committee. Three days later we find the consultation appointing Hall agent for the purchase of war munitions and instructing him to draw on this committee for funds. Patriotic citizens also began to offer loans and securities in the hope that an hypothecation of individual property might prove more tempting to the money lenders than a bare pledge of the public faith. Stephen F. Austin tendered his "whole estate," to be mortgaged as the consultation saw fit; J. W. Fannin presented thirty-six slaves; and Ben Fort Smith offered eleven leagues of land for the same purpose.¹ On the 13th the house gratefully

¹ Austin to the consultation, November 4, 1853. Archives of Texas, diplo-

accepted these proffers, but resolved to make use of them "only when imperiously demanded in the most extreme emergency."

The labors of the consultation practically ended with the enrolment of an ordinance creating a provisional government. By this instrument it was made the duty of the general council "to devise ways and means," and jointly with the governor it was authorized to contract loans "not to exceed one million of dollars," hypothecating the public land and pledging the faith of the country therefor. And they were invested with power "to impose and regulate imposts and tonnage duties, and provide for their collection under such regulations as may be the most expedient." They should appoint a treasurer and clearly define his duties; and finally, all monies due or accruing on lands and all other public revenues were placed at their disposal. As if this were not sufficient latitude, the governor and council were given "power to adopt a system of revenue to meet the exigencies of the state."¹

Upon the provisional government's assumption of power it was felt that the time had at last come for less tentative measures. The problem, as tersely stated by Governor Smith in his first message to the council, was "to call system from chaos"; but, "without funds, without munitions of war, with an army in the field contending against a powerful foe," the outlook did not appear to him particularly bright. As a preliminary step he thought a treasurer and other fiscal officers ought to be appointed.² The council agreed with him, and the committee of state and judiciary reported, on November 17,

that the immediate appointment of a treasurer to the provisional government, whose duty shall be clearly defined, is now devolving upon

matic correspondence, file 1, no. 6. Fannin to same, November 6, 1835, file 6, no. 559. Smith to same, November 8, 1835, file 18, no. 1708.

From a letter of Frost Thorn's to the consultation, dated November 1, 1835 (file 18, no. 1753), it would appear that Nacogdoches took the lead in these contributions. He said that \$2,800 in cash and twenty-eight horses had been subscribed by the citizens of that jurisdiction, but if this money ever reached the consultation, no acknowledgment of it was made.

¹ Journal of the Proceedings of the Consultation, 7-48, *passim*.

² Journal of the Proceedings of the General Council, 12, 14.

this body. Receipts and disbursements of public monies have been hitherto carried on without system, consequently without any other responsibilities to the public than that high sense of moral feeling which so eminently distinguishes the free sons of that country in revolutionary times from which our citizens have descended.¹

Accompanying this report, the committee submitted an ordinance creating a treasury department. It was passed the following day, but was vetoed by the governor because the salary of the treasurer was fixed at \$3,000 a year, an exorbitant one, as he thought, with the finances of the state in the condition they then were. Upon further deliberation, the council unanimously sustained his objection, and on the 24th D. C. Barrett proposed a new ordinance, obviating it. By a suspension of the rules this was passed the same day, and the governor approved it on the 26th. Besides defining the treasurer's duties, the law directed that disbursements should be made only upon the order of the general council, "approved and signed by the Governor and attested by the Secretary of the Executive."²

The election of a treasurer, Josiah H. Fletcher, completed the organization of the department,³ but the method of drawing drafts, though a safe one, was a bit cumbersome, and the council passed an ordinance (December 2) providing that an order from the chairman of the finance committee should be a sufficient voucher to the treasurer for disbursements. The chairman was required to report such orders to the house, in order that the amount might be entered upon the journal, but the governor, with some justice, pointed out that this was an inadequate safeguard, and vetoed the bill. The council, however, was determined and passed it over his objection.⁴

But, perhaps in anticipation of this action, Mr. Millard, chairman of the committee on finance, shrinking either from the responsibility or, more probably, the labor involved, secured the passage of a resolution for the appointment of a committee of

¹ Journal of the Proceedings of the General Council, 19.

² *Ibid.*, 21, 23, 37, 43, 48, 49; Ordinances and Decrees of the Provisional Government, 24-26.

³ *Ibid.*, 109.

⁴ *Ibid.*, 112-113; Ordinances and Decrees, 46-47.

public accounts. This was "to receive, audit, and register said accounts," and keep records showing the status of all claims, "whether passed, rejected, or under consideration," and report upon them twice a week to the general council.¹

A fortnight later Mr. Royall, who had been appointed chairman of this committee, sought escape by creating the office of auditor, and his bill, amended to provide for a comptroller also, was passed December 26. The law defining the duties of these officers is a rambling one of twenty-one sections; but in brief it was declared the duty of the auditor to pass upon the validity of all claims, keep the books of the government and, after observing the proper formalities, draw drafts on the treasury to cover audited accounts. After approval by him claims under \$4,000 had to be examined independently by the comptroller. In case of disagreement between the two, the auditor might appeal to the decision of the council if it were in session or, in its absence, to the governor. All claims for more than \$4,000 he must submit first to the council or governor, and, when passed by them, to the comptroller for his approval — in this case, perhaps, merely formal. All drafts on the treasurer must be signed by the auditor and countersigned by the comptroller, and if the amount were greater than \$4,000, they must bear in addition the approval of the governor or council. But the council reserved the right to order "payments on claims not within the provision of this ordinance." Twice a week — on Wednesday and Saturday — to prevent fraud, auditor and comptroller must make to each other reciprocal reports of claims audited and drafts signed, and once a week both were required to report to the general council or the governor. The governor objected to the clause which gave the council power of exempting certain claims from the operation of the law, but the bill was passed unchanged over his veto (December 29).²

The appointment of officers to collect, respectively, customs duties and dues on land completed the establishment of the fiscal administrative machinery.

But the provision of revenue was a matter of greater difficulty. The committee on finance estimated on paper an adequate income

¹ Journal of the Proceedings of the General Council, 145.

² *Ibid.*, 200, 205, 210; Ordinances and Decrees, 99-105.

from sale of the public domain, taxes on land, a tax on slaves, an export duty on cotton and tonnage and tariff duties; but they were constrained to admit that, although the picture which they presented might be "flattering and exhilarating in the highest degree to the patriot and statesman, . . . yet the urgent, pressing, and unavoidable exigencies and immediate necessities of our state . . . require a fund to which it can immediately recur." To secure this, they could think of no project "possessing in a higher degree all the essential requisites of speedy operation, and combining celerity and certainty in its accomplishment, than that suggested by a loan."¹

In the end this really did prove, though none too speedy in its operation, the country's chief means of securing ready money, but the council had no notion of trusting all their ventures to one bottom. To mention their experiments in chronological order: on November 27 an ordinance was approved granting letters of marque to privateers; on December 5 a general law provided for the negotiation of a million-dollar loan; a week later a system of tonnage and tariff duties was declared; on December 30 measures were taken for the efficient collection of land dues; on January 6 the sale of certain public property was ordered by resolution; and on January 20 an issue of treasury notes was authorized. To these sources of revenue must be added finally a number of donations. In discussing these measures donations will be considered first and loans will be postponed till the last.

Most of the donations came from the United States, and, though never very great, as an evidence of good-will they afforded encouragement to the Texans far out of proportion to their intrinsic importance. The contribution of the New Orleans committee during the session of the consultation has already been noticed, but at the same time similar committees were busy in Natchitoches and Mobile. November 15 the council acknowledged the receipt of a letter from D. H. Vail, of the former place, informing them that he had received "in different articles" about \$800 for the benefit of Texas, and at the same time news came that in Mobile \$2,000 had been raised.² On November 30 General Hous-

¹ Journal of the Proceedings of the General Council, 61-67.

² *Ibid.*, 8.

ton presented a gift of \$100 from Mr. John Hutchins, of Natchez, Mississippi,¹ and some two weeks later we find the council taking steps to change a thousand-dollar bank note which, Gouge says, was a contribution from the United States.² In the meantime, commissioners had been dispatched to the United States for the purpose primarily of negotiating a loan, but with instructions among other things to receive donations, and late in February they reported a gift of \$500 from three citizens of Nashville.³ About the same time Samuel St. John, a rich cotton factor of Mobile, authorized the provisional government to draw on him for \$5,000. He had visited Texas, he explained, in the summer of 1832 and had ever since retained a lively interest in her welfare, because of her peculiar facilities for cotton growing.⁴ On March 7 the convention passed a resolution of thanks to H. K. W. Hill of Nashville for a gift of \$5,000,⁵ and on May 20 the citizens of Port Gibson, Mississippi, made a cash donation of \$927.⁶ As late as June 27, a Dr. Williams presented a donation of \$650 from the United States,⁷ but I have found no reference to other contributions, though it is not unlikely that others were made. The commissioners in their progress through the country appointed numerous local and general agents to solicit volunteers and donations, and the funds collected were employed in equipping those who volunteered.⁸ With the exceptions noted, this seems to have been the form in which all the contributions mentioned reached the Texans.

¹ Journal of the Proceedings of the General Council, 78.

² *Ibid.*, 171; Gouge, Fiscal History of Texas, 32.

³ Austin Papers, N 12.

⁴ St. John to Governor Smith, February 22, 1835. Archives of Texas, diplomatic correspondence, file 16, no. 1586.

⁵ Proceedings of the Convention at Washington, in Gammel's Laws of Texas, i, 848-849.

⁶ Treasurer's report, August 7, 1836. Archives of Texas, D, file 29, no. 2844.

⁷ *Ibid.*

⁸ Stewart Newell, agent in Philadelphia, was instructed to use for this purpose all money collected before the middle of June. Austin Papers, N 5.

Mr. Henry M. Morfit, writing to Hon. John Forsyth, under date of September 4, 1836 (24th Congress, 2d Session, House Ex. Doc. no. 35, p. 15), says that several individuals have "unostentatiously presented \$5,000, while numbers have contributed \$1,000 each," but a diligent search through the archives has failed to corroborate this.

In Texas itself the wealth of the citizens, as of the state, consisted in land. One is not surprised to learn, therefore, that with two exceptions they subscribed no cash. On November 1 Frost Thorn wrote to inform the consultation that the people of Nacogdoches had pledged in mass meeting the previous day twenty-eight horses and \$2,800,¹ while a few days later San Augustine announced subscriptions of thirteen horses and \$400.² No record is shown of the receipt of this money by the government, so it is probable that all was expended by the local committees in purchasing ammunition and in supplying volunteers from the United States who passed through east Texas on their way to the army.

In the latter part of March, when loans on satisfactory terms were almost despaired of, President Burnet proposed to several friends a plan to raise funds by selling individual property. Persons who donated land for this purpose were to take a receipt for their gift, and the government, when able, would repay them, either in money or, if the land had not been sold, by a retransfer of the land. James Kerr was the first to manifest his approval of this suggestion by surrendering (March 23) for the disposition of the government four hundred and eighty acres of land in De Witt's colony. The following day Mr. Gail Borden endorsed the plan, and expressed the opinion that a contribution of \$100 was worth more than a subscription of \$1,000. A circular from the office of *The Telegraph and Texas Register* gave publicity to the proposition, and exhorted the people to sell a small part of their property in order to save the remainder from the enemy. Four and a quarter leagues — including Kerr's gift — were subscribed immediately.³ Shortly after this, however, Burnet decided that he had no authority to promise repayment of such advances, though he felt sure that Congress would be quite willing to do so. Accordingly, Retson Morris added a half league unconditionally.⁴

¹ Thorn to General Council, November 1, 1835. Archives of Texas, diplomatic correspondence, file 18, no. 1753.

² Journal of the Proceedings of the General Council, 7.

³ Kerr to Burnet, March 23, 1836. Archives of Texas, diplomatic correspondence, file 24, no. 2369. Borden to same, March 24, 1836, file 22, no. 2157. Circular, file 4, no. 351.

⁴ Archives of Texas, diplomatic correspondence, file 22, no. 2180.

Before other contributions were made the battle of San Jacinto had been won, and the people considered their sacrifices no longer necessary.

Inasmuch as these land donations were made, nominally at least, in the expectation of repayment, it would perhaps be technically more accurate to call them loans. But the prospect of repayment was so remote that they were doubtless considered by the donors as free-will offerings. Practically it makes little difference how we regard them, for the reason that the government realized nothing from them, and it is doubtful whether formal transfers of title were ever made. They are of significance, nevertheless, as illustrating conditions of the time and the spirit of the people. "Deficient," as they were, says Kennedy,¹

in all the resources requisite for war, except moral energy and courage, the colonists themselves contributed, from their private means, whatever was calculated to be of use to the troops. Leaden water pipes and clock-weights were melted down for ammunition, and even the women cheerfully assisted in moulding bullets and making cartridges.

In granting letters of marque and reprisal the general council according to Gouge, "tried its hand at robbing," but, as he adds it could plead in extenuation "the precedents of the best established governments."² At any rate, the matter is of little importance, for if any privateers were actually put in commission nothing was ever heard of them. From the beginning the law was designed to provide defense rather than revenue, and this was soon rendered unnecessary by the acquisition of a regular navy sufficient to meet any naval operations from Mexico.³

The colonists turned naturally to a tariff as a revenue device, for the reason that Mexico had been spasmodically trying ever since 1832 to collect customs. In his first message Governor Smith recommended the establishment of a tariff, and the finance committee estimated an annual income of \$125,000 from tonnage

¹ *Texas*, ii, 115.

² *Fiscal History of Texas*, 27.

³ *Journal of the Proceedings of the General Council*, 26, 31, 75; *Ordinances and Decrees*, 23-24, 38; *Archives of Texas*, diplomatic correspondence, file 25, no. 2414.

dues alone. No time was lost in introducing a bill. It was passed on the 8th, and approved on the 12th, but how much revenue it yielded is unknown.¹ In all likelihood it was very little. Thomas F. McKinney declared that all the merchants in the country had imported larger stocks than usual in anticipation of the law, and complained that he had been prevented from doing the same, because his partner, Mr. Williams, had neglected his own business in the United States to purchase supplies for the government.² The council, thereupon, to remedy the injustice, passed an act exempting from duty all goods actually shipped but not received by this firm before the passage of the act.³ All promise of revenue from this law was permanently blighted on January 20, by making treasury notes acceptable for customs. Complaints soon began to come in, too, from the United States,⁴ and since Texas was so largely dependent upon the good will of that country, it is likely that the enforcement of the law quietly ceased. Finally, the constituent convention decreed, March 12, 1836, that the provisional government had exceeded its authority in levying import duties, and ordered what had been collected to be repaid.⁵

The collection of land dues next occupied the attention of the council. The colonization law of Coahuila and Texas provided that

new settlers shall pay to the state, as an acknowledgment for each *sitio* of grazing land, thirty dollars; for each *labor*, not irrigible, two and a half; and for each that is irrigible, three and a half; and so on proportionally, . . . but the payment thereof need not be completed under six years from settlement.

When hostilities began, J. H. Money, of the municipality of Austin, had in his possession from this source a balance of \$296.70,⁶

¹ Journal of the Proceedings of the General Council, 14-200, *passim*; Ordinances and Decrees, 79-85, 86-87, 104-114.

² McKinney to Provisional Government, December 25, 1835. Archives of Texas, diplomatic correspondence, file 14, no. 1340.

³ Ordinances and Decrees, 119-120.

⁴ Edward Hall to Governor and General Council, February 4, 1836. Comptroller's department, Letters to Treasurer, vol. i, 11.

⁵ Archives of Texas, A, file 4, no. 462.

⁶ Report of J. H. Money, December 31, 1835. Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835-36.

and most of this, as we have already seen, the consultation used. Considerable sums were also in the hands of the collectors at Nacogdoches, and a few days after its organization the general council appointed a committee to take charge of them. On November 27 Mr. Menard of this committee reported that he had secured from land dues \$1,678.77½, and from the sale of stamped paper \$250.¹ Grasping at straws, as they were, and seizing upon everything that promised a revenue, however insignificant, this report must have encouraged the council. An ordinance of December 30 authorized the appointment of "collectors of public dues" in each of the departments of Texas. But as a yielder of revenue the law was greatly impaired in efficiency by the provision that properly audited treasury orders should be receivable for such dues.²

Mr. Gail Borden was elected collector for the department of Brazos, and two of his reports are at hand. An incomplete one of July 31, 1836, shows that he had received at that time but \$797.62½. Owing to the unsettled conditions, however, he had heard from only one deputy, Andrew Ponton of Gonzales. Some persons, too, had secured treasury orders with which to pay and had neglected to endorse them, so that he could not report such dues as paid.³ Collections during the second half of the year were much better, and he was able to report a total on January 1, 1837, of \$6,836.32.⁴ This probably included the \$797.62½ previously reported. Doubtless the greater part of this was in orders on the treasury. No report can be found from the department of Nacogdoches, but there was much opposition in that quarter to the closing of the land offices by the consultation, and on this account it is probable that few of the citizens paid their dues.

¹ Comptroller's department, in *Miscellaneous Papers of the Treasury Department*, 1835-36.

² Ordinances and Decrees, 114-117, 132-133.

³ Borden to Hardeman, July 31, 1836. Comptroller's department, *Letters to Treasurer*, vol. i, 55-56. *Telegraph and Texas Register*, September 21 and 28, 1836.

⁴ *Ibid.* 76, 77. Of this amount, \$3,902.04 was collected in Austin's colonies, \$1,607 in Austin and Williams's colony, \$1,255.38 in DeWitt's colony, and \$71.90 was collected by Thomas Gazley of the municipality of Mina.

The council also tried, but with little success, to raise money by the sale of public property. This consisted almost entirely of land, but \$229.50 was realized by the sale of a quantity of stamped paper to W. H. Steele on December 29,¹ and a few days later (January 2) Governor Smith requested the general council to make some disposition of "various goods" in charge of the commandant at Goliad. Their value, he said, was "considerable."² The military committee forthwith recommended a resolution, which was passed, authorizing Captain Dimmit to sell them at auction, but of the proceeds of the sale nothing is known. By the capture of San Antonio in December a quantity of supplies fell into the hands of the Texans, and these also were sold at auction. Members of the Texan army gave notes for their purchases to the amount of \$1,271.99, and later these were charged against their account for service.³ As a source of ready money the public land was a failure, too. In May, 1836, President Burnet authorized Thomas Toby & Brother of New Orleans to sell five hundred thousand acres at fifty cents an acre, but practically no sale was found for it. In another way, however, the public domain was very valuable — many volunteers were attracted from the United States by the liberal land bonus which the government offered them.

Finally it was decided to issue treasury notes, and Mr. Gouge thinks cheating none too harsh a term to apply to this expedient of the government. The act was approved January 20, and provided

that the Treasurer shall immediately cause to be printed in a neat form and shall issue, in discharge of claims against the Government and drafts against the Treasury, the amount of one hundred and fifty thousand dollars in Treasury notes, . . . specifying on the face thereof, that they shall be received in payment for lands and other public

¹ Journal of the Proceedings of the General Council, 229; Report of Treasurer, November 28, 1835, to March 1, 1836, Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835-1836.

² *Ibid.*, 241.

³ Auditor's report, January 8, 1836, Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835-36. Archives of Texas, D, file 26, no. 2591.

dues, or redeemed with any monies in the Treasury not otherwise appropriated.¹

Of course, with no money in the treasury, and little prospect of getting any, these notes were practically worthless from the day of their issue.

But from the beginning it was felt that a loan from the United States must be the chief hope of the country for money; and, as we have seen, Thomas F. McKinney refused a commission tendered him by the permanent council on October 27 to negotiate a loan of \$100,000. The sentiment of the consultation is revealed in the inaugural address of the chairman: "It will be necessary," he said, "to procure funds in order to establish the contemplated government and to carry on the war in which we are now engaged; it will, therefore, be our duty to elect agents to procure those funds." Accordingly, two days before adjournment (November 12), B. T. Archer, W. H. Wharton and Stephen F. Austin were appointed commissioners to the United States, with such powers and instructions as the "governor and general council may deem expedient."²

The council was strangely dilatory in preparing these instructions. A select committee appointed for that purpose reported, November 21,

that upon considering the matter, they are unable to find any acts of the Convention or of this Council, whereon to base instructions for said agents, or any data which can guide your committee in an opinion of their duties, but from all the information they can obtain, your committee have concluded that the agents should receive their instructions from the Executive; but in order to enable the Governor to give the necessary instructions, an ordinance should first be originated by the Committee of State, and passed and approved, defining in general the powers and duties of the agents. . . . But your committee can not advise that the Committee of State be instructed upon this subject with propriety, until the reports of the several committees on the Military, Navy, and Finance have been received and passed.³

¹ Ordinances and Decrees, 129-130.

² Journal of the Proceedings of the Consultation 7, 37.

³ Journal of the Proceedings of the General Council, 42.

In view of the fact that the committee took "the liberty," on account of "the emergency and great press of business," to submit an ordinance empowering Mr. McKinney to borrow \$100,000, this report appeared a bit inconsistent. So at least thought Governor Smith, for he pointed out the impropriety of employing agents with duties which might conflict with the powers of the general agents already appointed, and vetoed the bill. But the council without a dissenting vote passed it over his veto and it became effective November 26.¹ Any confusion which might have ensued was obviated by McKinney's making no effort to carry out the law.

At the end of nearly two weeks the council had passed to its third reading an ordinance to create a loan of a million dollars, but there it seemed likely to stop, when the governor took up the matter thus: "It must be acknowledged by all," he said in his message of December 4,

that our only succor is expected from the East, where as yet we have not dispatched our agents. Sufficient time has elapsed since the rising of the Convention for them, by this time, to have arrived in the United States. They have called on me in vain day after day, time after time, for their dispatches, . . . and they are not yet ready. I say to you, the fate of Texas depends upon their immediate dispatch and success. . . . Permit me to beg of you a suspension of all other business, until our Foreign Agents are dispatched.²

Thus bestirred, the council immediately passed the bill providing for a loan, and the next day passed an ordinance outlining the instructions which the governor should give the commissioners. Both bills were approved on December 5.

For the loan, the governor was required to make out ten bonds of \$100,000 each, payable in not less than five nor more than ten years; and with these the commissioners were "by all proper ways and means, by sale or pledge" to secure the loan, "or such part thereof as they can effect, upon the best terms the market affords, not exceeding ten per cent per annum." In case these bonds should not be accepted as sufficient security, the commis-

¹ Journal of the Proceedings of the General Council, 50-53; Ordinances and Decrees, 18.

² *Ibid.*, 97, 103, 104.

sioners were instructed "to pledge or hypothecate the public lands of Texas, and to pledge the public faith" — everything, in fact, that Texas possessed.¹ With this authority, the governor lost no time in issuing commissions to the agents, and their private instructions were ready for them on December 8.² But more than two weeks elapsed again before these gentlemen sailed for New Orleans.

In the meantime, a loan for the use of Texas had already been secured by Mr. Hall from William Brookfield of New Orleans — a small one, to be sure, \$1,100, but to the Texans it probably seemed an earnest of the success of their agents when these should reach the United States.³

On January 10 the commissioners notified Governor Smith that they had arranged for two loans aggregating \$250,000. The fact that this could be done in New Orleans, where the Texas situation was so well known, they considered particularly encouraging and of good augury for success in other parts of the United States. It will be seen from their terms that these so-called loans were really nothing more than contracts for the purchase of five hundred thousand acres of land at fifty cents an acre; but the commissioners thought themselves very fortunate to get money on any terms. "In fact, rather than have missed the loan," they wrote, "we had better have borrowed the money for five years and given them the land in the bargain." They were of the opinion, moreover, that the loan would increase the interest in Texas; the lenders, they said, had already offered to land in Texas within six weeks five hundred volunteers.⁴

¹ Ordinances and Decrees, 44, 45, 52-54.

² Austin Papers, N 2. Besides negotiating this loan, they were to make arrangements for fitting out a navy, procure supplies for the army, receive donations and, finally, proceed to Washington and find out the attitude of the government toward Texas. They were to learn whether any interposition might be expected from the United States, or whether "any ulterior move on our part would be more commendable and be calculated to render us more worthy of their favour, or whether by any fair and honorable means Texas can become a member of that Republic." In short, they were to learn whether, if Texas should declare independence, the United States would immediately recognize it and form an offensive and defensive alliance.

³ Hall to Governor and General Council, January 9, 1836; Comptroller's department, Letters to Treasurer, vol. i, 11; Journal of the Proceedings of the General Council, 232.

⁴ Austin, Archer and Wharton to Smith, January 10, 1836. Austin Papers, N 15.

The first loan, of \$200,000, was subscribed by ten men, four of whom were from Cincinnati, three from Kentucky, two from Virginia, and one from New Orleans.¹ Ten per cent of the amount was paid down; the balance was to be paid upon ratification of the contract by the convention, which had been called for March 1. The amount advanced was to bear eight per cent interest, and the lenders might, if they chose, take land in repayment for this and future instalments at the rate of fifty cents an acre. In case they elected to take land — and all of them intended to — the government was to survey and plot it in tracts of six hundred and forty acres each, and they must make their selection within two months after publication of a notice that the lands were ready. Article fifth provided that “no grant or sale of land shall be made by the government of Texas, from and after the date hereof, which shall not contain a full reservation of priority for the location to be made under this loan,” but this was not to apply to vested rights already existing. Article sixth, a little more sweeping, declares that “none of the public lands are to be offered at public or private sale until after the locations hereinbefore provided for shall have been made.” For the faithful performance of this contract, the commissioners pledged “the public lands and faith of the government of Texas,” but even after its confirmation the lenders reserved the right of declining to pay the balance.²

The second loan was for \$50,000, and seven of the twelve subscribers were residents of New Orleans, while three were from Virginia and two were from Kentucky.³ This loan was supposed to have been in cash, but Austin for some reason estimated that it would yield them net but \$40,000.⁴ Gouge, however, who

¹ From Cincinnati, Thomas D. Carneal subscribed \$40,000, Lewis Whiteman, \$5,000, Paul Anderson, \$5,000, and James F. Erwin, \$5,000; from Kentucky, James N. Morrison subscribed \$10,000, Robert Triplett, \$100,000, and George Hancock, \$5,000; from Virginia, William F. Gray and James McCulloch subscribed \$10,000 each; and Alfred Penn of New Orleans also subscribed \$10,000.

² Dienst Collection, ii, 11. The original MS. contract can be found in the archives of Texas, D, file 29, no. 2828.

³ The subscribers were: from New Orleans, Gabriel W. Denton, \$10,000, Jacob Wilcox, \$10,000, James Huie, \$5,000, Thomas O. Meux, \$2,500, Christopher Adams, Jr., \$1,000, and Thomas Banks, \$1,000; from Virginia, William F. Ritchie, \$8,500, Howard F. Thornton, \$1,000 and Jeremiah Morton, \$3,000; from Kentucky, James Erwin, \$5,000 and Robert Triplett, \$2,000.

⁴ Austin to McKinney, January 21 1836. Austin Papers, N 10.

wrote from documents, some of which are not now accessible, says that the amount actually received was \$45,802.¹ The conditions of this loan were the same as those of the first, except that priority of location was reserved to subscribers to the first, and that the commissioners pledged their personal property for the ratification of this contract by the convention.²

To the lenders this was simply a gigantic land speculation. They bound themselves by mutual agreement not to sell to any outsiders for less than \$1.25 an acre, and began forthwith to "boom" Texas lands both by letter and in the public prints.³ The Texans were at first glad enough to get money on any terms, and such expressions as were made at the time favored prompt ratification of the contracts in order that the remaining instalments might become available. But before the convention met considerable opposition was being manifested to the provision which secured to the lenders prior rights of location. This feeling was so strong in the convention that Mr. Robert Triplett, on behalf of himself and the other stockholders, proposed a compromise relinquishing all such rights in return for certain compensation;⁴ but the organization of a government occupied the attention of that body until its adjournment, and action upon the matter was referred to the president and his cabinet.

One of the first acts of President Burnet apparently was to ask each member of his cabinet for a written opinion on the subject of ratification.⁵ All opposed it, and on April 1 Burnet himself wrote to Triplett and Gray, who were representing the lenders, and summarized their objections. The government, he said, was anxious to preserve the faith of the republic and would make any reasonable sacrifice to do so; it realized the circumstances under which the loans were made and hesitated, therefore, to avail itself of the undoubted legal right to disavow them; but the fifth article would paralyze future land sales; the agents had exceeded their

¹ Gouge, *Fiscal History of Texas*, 53.

² Dienst Collection, ii, 12. The original MS. contract can be found in the comptroller's department, in file "relating to the \$50,000 loan."

³ Speech of Triplett to the Convention. Comptroller's department, in file "relating to the \$200,000 loan."

⁴ *Ibid.*

⁵ These opinions may be found in the archives of Texas, D, file 29, no. 2888.

instructions in making the contracts; and finally, the government doubted its right to alienate the public lands. For these reasons the president and cabinet refused to ratify the loans and proposed to refund the money already advanced with twenty per cent interest, payments to be made in two instalments, six months and one year from date. The "faith and credit of the republic" was pledged for these payments,¹ but the lenders wanted land, and Triplett, who had already submitted numerous proposals of compromise, finally secured the acceptance of one on the same day that Burnet's letter was written.

By the terms of the compromise, the right of prior location was surrendered by the lenders in return for a bonus of thirty-two leagues of land, which was to be distributed to them in proportion to their paid up subscriptions. As for the rest of the loan, they might pay it or not as they chose.² The stockholders as a rule were inclined to accept the compromise, and a number of them, in fact, on May 25 voted to do so.³ They also intended, they afterward said, to advance the balance of the loan; but dissatisfaction arose over the form of the scrip which the government issued to them and, before this could be adjusted, the government authorized Thomas Toby & Brother to sell five hundred thousand acres of land at the same price at which it was offered to the lenders — fifty cents an acre. This destroyed the monopoly which they expected to enjoy and ruined their market, so that they declined to buy more.⁴ There followed a good deal of bickering on both sides, the government and the lenders charging each the other with bad faith, but by acts approved respectively June 3, 1837, and May 24, 1838, Congress made appropriations of land at fifty cents an acre to pay the two loans, and thus closed the most important chapter in the finances of the revolution.

¹ Burnet to Triplett, Gray *et al.*, April 1, 1836. Archives of Texas, diplomatic correspondence, file 22, nos. 2164 and 2185.

² Dienst Collection, ii, 27. The original MS. of the compromise is in the comptroller's department, in file "relating to the \$50,000 loan."

³ Copy of the compromise in the comptroller's department, in file "relating to the \$200,000 loan"; also Triplett to Jack, August 19, 1836. Archives of Texas, diplomatic correspondence, file 18, no. 1796.

⁴ Triplett to Jack, August 19, 1836. Archives of Texas, diplomatic correspondence, file 18, no. 1796.

The next loan, \$1,000, reached the treasury from the hands of Mr. G. C. Childress. Whether it was advanced by Childress personally or obtained by him as agent in the United States is not clear.¹

But the commissioners, greatly encouraged by their success in New Orleans, continued their activities in the United States. They were offered a loan of \$50,000 in Mobile on the same terms as the New Orleans loan, but for some reason nothing ever came of it.² Elsewhere they were not so well received. Men hesitated to risk their money in Texas until a declaration of independence was made, and though the commissioners urged this step upon the government time after time, no attention was paid to them. Indeed, as late as April 24, Austin complained that they had heard from the government not "one word."³ To make matters worse, there spread through the country rumors of the unchecked advance of the Mexicans and of the unfortunate quarrel between the governor and council, and it is not strange that the most strenuous efforts of the commissioners were in vain — although, as Wharton said, "we offer to the lenders to pledge all we have on earth, even to our wearing apparel."⁴

On April 11 Austin made an ingenious proposition to President Biddle of the United States Bank for a loan of \$500,000.⁵ Biddle sympathized with the Texans, but, needless to say, his business conscience could not accept Texan bonds as bankable security. On the 15th, Austin made a frantic appeal to President Jackson and Congress for a share of the \$37,000,000 surplus in

¹ Treasurer's report, August 7, 1836. Archives of Texas, D, file 29, no. 2844.

² Commissioners to Governor Smith, February 16, 1836. Austin Papers, N 29.

³ Austin to Bryan, April 24, 1836 (copy). Archives of Texas, diplomatic correspondence, file 1, no. 41.

⁴ Wharton to Smith, April 9, 1836. Archives of Texas, diplomatic correspondence, file 21, no. 2001.

⁵ Austin Paper, N 15. The proposal was to deposit in the United States bank Texas bonds for \$500,000, bearing eight per cent interest for ten years, upon which the bank should issue stock certificates at \$100 each for the same amount. These stocks were to be offered to the public for a cash payment of \$25, with notes at sixty, ninety and a hundred and twenty days for the balance. The notes were to be discounted by the bank, and all the money thus obtained should be paid over to the commissioners. At the end of five years the state would begin the redemption of the bonds, and would take up one-fifth annually.

the national treasury, but naturally nothing came of that.¹ Two weeks later arrangement was made for a loan of \$100,000 in New York on the same plan as the New Orleans loans. The lenders in this case had the option of taking land in repayment at twenty-five cents an acre, but since the expense of issuing stock certificates and surveying the land was to be borne by them, it is doubtful whether they enjoyed any advantage over the former lenders. Ten per cent of the loan seems to have been paid,² but only \$7,000 can be accounted for. Austin deposited \$5,000 with William Bryan in New Orleans, June 12,³ and \$2,000 was paid to Wharton.⁴ The commissioners themselves admitted that they did not expect this loan to be ratified, "unless the prospects of Texas were gloomy even to desperation."⁵

Thus it is evident that the actual cash cost of the war of Texan independence was not great. The treasurer reported on March 1, 1836, that he had received and expended since November 28, 1835, \$3,981.85. This amount was yielded principally by the revenues of Texas, but if any other sums ever came from the same source, the fact is not revealed by the records.⁶ Donations it seems certain did not exceed \$25,000, and much of this was in kind; while the loans amounted, it was said, to \$100,000.

The total indebtedness of the government at the end of August, 1836, was estimated by the treasurer at \$1,250,000. Of this amount there was due for loans \$100,000, on account of the navy \$112,000, to the army \$412,000, for supplies \$450,000, and for civil and contingent expenses \$118,000. The remaining \$60,000 is not itemized.⁷ Some of these claims were paid in land, but the

¹ Raines's Year Book for Texas, ii, 435, 436. The letter is addressed to "Andrew Jackson, Martin Van Buren, Richard M. Johnson, John Forsyth, Lewis Cass, T. H. Benton, and to any member of the Cabinet or Congress of all parties and all sections of the United States."

² Treat to Austin, July 30, 1836. Austin Papers, N 15.

³ Accounts of the commissioners. Austin Papers, N 1.

⁴ Treat to Austin, July 30, 1836. Austin Papers, N 15.

⁵ Austin, Archer, and Wharton to Burnet, July 21, 1836. Archives of Texas, diplomatic correspondence, file 1, no. 47.

⁶ Treasurer's report, November 28, 1835, to March 1, 1836. Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835-1836.

⁷ Estimate of Public Debt, August 26, 1836. Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835-1836.

most of them were discharged with treasury notes, which subsequently were unmercifully scaled and redeemed. Such debts as remained unpaid at the time of annexation were paid from the ten million dollars which the state received from Congress in 1850.

In the end, therefore, notwithstanding the importance of the stake, it is easily seen that the cost of the revolution was trivial. And one is inclined to marvel with Mr. Morfit that Texas could have carried on "with so little embarrassment to her own citizens or her treasury" a successful war.

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A GOLD STANDARD FOR THE STRAITS SETTLEMENTS.

THE decade from 1870 to 1880 was noteworthy in monetary history for the extensive substitution throughout the western world of a gold standard currency for the previously dominant bimetallic standard. The ten years beginning with the closing of the Indian mints in 1893 will in like manner be noteworthy for the extensive substitution in the eastern world of the gold standard for the silver standard which had theretofore existed throughout almost the entire Orient from time immemorial.

Among the most recent of oriental countries to undertake the adoption of a gold standard currency is the Straits Settlements. This British colony, composed of Singapore, Penang, Malacca and their dependencies, is one of the great entrepôts of the shipping trade of the Orient. Like most eastern countries it has had a varied monetary experience.¹ The tin "pice," the various kinds of silver rupees, the Dutch rix dollar, the Japanese copang, the Carolus dollar of Spain, the Mexican and British dollars and their kindred South American coins, as well as sterling coins and money coined by the Straits Settlements themselves, have all had at one time or another a wide circulation in the Malay peninsula. From early in the sixteenth century until the present time, however, in spite of several attempts to displace it,² the principal medium of exchange and the real money of account of the Straits Settlements has been the old Spanish dollar or some of its illustrious descendants like the Mexican and British dollar.

In 1867, the year of the transfer of the Straits Settlements from the control of the Indian government to that of the secretary of state for the colonies, an ordinance was passed repealing all laws making Indian coins legal tender and declaring that, after April 1 of that year, "the dollar issued from her Majesty's mint at Hongkong, the silver dollar of Spain, Mexico, Peru and Bolivia, and any other silver dollar to be specified from time to

¹ An excellent brief historical treatment of the Straits Settlements currency will be found in Chalmers' Colonial Currency, chap. 38.

² *Ibid.*

time by the Governor in Council, shall be the only legal tender" with the exception of certain subsidiary coins.¹ Since 1871 subsidiary coins for the Straits Settlements have been struck by the royal mint. An order in council dated October 21, 1890, repealed all previous laws with reference to legal tender in the colony and declared the Mexican dollar the standard of value, at the same time giving unlimited legal tender to the Japanese yen, the Hongkong dollar and half-dollar and the American trade dollar. Prior to the passage of the currency law of 1903 two subsequent orders in council of importance, relative to the currency, were passed under dates of February 2, 1895, and October 20, 1898. These orders taken together removed the legal tender quality from the American trade dollar and the Japanese yen, reaffirmed the law making the Mexican dollar the standard coin and declared that the Hongkong dollar and the recently coined British dollar should be legal tender and be treated as equal to the standard dollar. The Straits currency thus established was, with a slight modification, adopted by the Federated Malay States.

About the beginning of the calendar year 1903 the actual currency of the Straits Settlements, the Federated Malay States and Johore was roughly estimated as follows:²

(1) About thirty million British and Mexican dollars, of which by far the larger part was British dollars, and of which nearly a third represented coin held in reserve against the government's note issue.

(2) Nearly seven million dollars of Straits Settlements subsidiary coins, of which it was officially estimated that something like \$300,000 had been shipped out of the country.

(3) An unknown amount of copper coins, the remainder of a total coinage since 1871 officially stated at 1,887,500 dollars (nominal), of which large quantities had been shipped out of the country.

(4) About thirteen million dollars of government notes.

The effect of the fall in the gold price of silver was similar in the Straits Settlements to what it was in India, Mexico and the other silver standard countries of the world which had extensive

¹ Report of the Straits Settlements Currency Committee, London, May, 1903. pp. 4 and 5.

² *Ibid.*, pp. 5 and 6.

trade relations with gold standard countries. The evils resulting to local business from the rapidly falling and fluctuating exchange with gold standard countries finally became so serious in 1893, after the closing of the Indian mints and the calling of the extra session of the Congress of the United States to consider the repeal of the Sherman law, that the British colonial secretary telegraphed to the governor of the Straits Settlements for a report as to possible remedial measures in the direction of securing for the colony greater stability of exchange. In response to this telegram a special committee was appointed by the governor to investigate local monetary conditions and to suggest remedial measures. The committee examined a considerable number of witnesses, whom they considered "fair representatives of the thinking men of the colony of all classes," and found that, with the exception of the majority of the Chinese traders, the witnesses examined were "mostly in accord in declaring that the fall in exchange has been disadvantageous to these Settlements." In spite of this fact, however, the committee was unable to agree upon any proposition favoring the introduction of the gold standard, and their report was divided. Half of the twelve members of the committee favored a gold standard, five of them advocating the introduction of the rupee, upon the plan which had at that time but recently been adopted by India, provided, however, that that plan should prove a success in India. The other half of the committee, including all the native members, favored a continuation of the silver standard.¹

From 1893 to 1897 there was considerable agitation and newspaper discussion in the Straits Settlements concerning the advisability of adopting a gold standard, but nothing came of it until 1897, when on August 25 the committee of the Singapore chamber of commerce, by a unanimous vote, adopted a resolution favoring the establishment of a fixed par of exchange with gold countries, and appointed a committee "to enquire into the local currency with the view of calling attention of government to the question of converting the Straits currency to a gold standard."

¹ A copy of the report of this committee is given in Appendix xvi of the *Minutes of Evidence and Appendices of the Straits Settlements Currency Committee*, London, May, 1903.

The essence of the recommendations of this sub-committee may be summed up as follows:¹

(a) The adoption of the English sovereign as the basis of the new currency "with a Straits dollar — fixed at the value of 2s. — subsidiary to it." The existing subsidiary silver coinage to continue unchanged except for being placed upon a gold basis.

(b) The government

not to let its intention be known, and, when a decision is arrived at, to pass a law at one sitting of the legislative council, and immediately thereafter issue a notification to the effect that during a term sufficiently brief to prevent importation, all dollar coins then legally current in the colony would be received at certain specified places and government currency notes given in exchange; and that, after the expiry of such term, the British, Mexican, and other dollars in circulation would be demonetized;

the Federated Malay States to promulgate the same law simultaneously.

(c) From the stock of silver obtained by the government from its exchange of notes for British and Mexican dollars a limited supply of the new two-shilling dollars to be coined, these dollars to contain an amount of silver of from sixty to seventy per cent of that contained in the British and Mexican dollars, the seigniorage to accrue to the gold reserve.

Nothing of any consequence in the way of monetary reform developed from the above plan. It was severely criticised by the governor, by the president general of the Federated Malay States, and by many others in high position.² This criticism was based on the following grounds:

(1) The expense involved in maintaining such a token coin at a two-shilling value and in exchanging the new dollar for the old one.

(2) The danger of counterfeiting, which in the Orient would be great in the case of coins, like the ones proposed, whose nominal value was so far above their bullion value.

¹ *Ibid.*, Appendix xvii.

² *Ibid.*, Appendix xxviii, no. 12. See also Appendix no. 54 of the Index and Appendices to the Evidence Taken before the Committee Appointed to Enquire into the Indian Currency, London, 1889.

(3) The difficulty of the government's keeping its intentions secret until the final passage of the law; and on the other hand, if the public were notified in advance, the danger of an inundation of British and Mexican dollars, to take advantage, either legally or illegally, of the two-shilling dollar exchange offered.

(4) The difficulty of inducing the natives, who were accustomed to judge the value of a coin by its weight, to take, at a higher value, a coin of a little more than half the weight they were accustomed to.

(5) The difficulty of inducing the native holders of the old dollars, especially those of the Federated Malay States, to exchange them for a paper currency with which they were not familiar.

As a result of these and other similar objections, nothing came of the plan proposed.

The rejection of this plan gave a quietus to the subject of a gold standard for the Straits Settlements, as far as any official action was concerned, until the middle of 1902. On June 9, 1902, the Singapore chamber of commerce again addressed a letter to the colonial government asking whether

in view of the recent serious decline in the value of the dollar current here, the violent fluctuations in the price of silver and the extreme uncertainty as to the future of this metal, all of which are not only causing great inconvenience to the trade of the colony but constitute grave obstacles to the development of its natural resources by stopping the flow of capital from other parts of the world,

the government were prepared to investigate into "the feasibility and expediency of securing fixity of exchange."¹ This letter, together with certain subsequent communications upon the subject, was forwarded to the colonial secretary in July.

The result of these communications was that a committee composed of Sir David Barbour, Mr. W. Adamson, Mr. G. W. Johnson and Mr. W. Blaine were appointed by the secretary of state for the colonies to consider:²

¹ Report of the Straits Settlements Currency Committee, p. 7.

² *Ibid.*, p. 3.

(1) The expediency or otherwise of introducing a gold standard of currency in the Straits Settlements and the neighboring Malay States.

(2) The practicability of making the change and the steps which in the opinion of the committee should be taken to effect this object if the change should be decided upon.

The committee began its hearing in London, November 13, 1902, and continued taking testimony until about February 1, 1903. During that time a mass of testimony both verbal and written was taken. The committee's sittings having been in London, it was necessary that the greater part of the testimony should be that of English merchants having trade experience with the Straits Settlements or with the East generally — the class of persons who, it will be noted, naturally would have been most favorable to the establishment of a gold standard. The masses of the population, represented by the natives, and by the Chinese, who do a large part of the business of the Straits Settlements and of the Federated Malay States, could not be heard directly; while through petitions and resolutions they took comparatively little part in the controversy — in fact they were for the most part ignorant of the entire matter. On the whole the evidence seems to show that the weight of opinion among the more intelligent of these classes was on the side of maintaining the *status quo*. The European community, with the exception of the bankers and of a few exporters, were almost a unit in favor of a gold standard.

A detailed discussion of the evidence brought forth in this testimony and published in the minutes of the committee's report is not necessary. The exhaustive discussion during the last decade or more of the effects of a fluctuating standard of value has made knowledge of the evils connected therewith general. The report of the local committee appointed in 1893 to consider the subject of the Straits currency declared that "all the effects remarked on in paragraphs 21-28 of the report of Lord Herschell's committee are in operation in the Straits." This statement was nearly as true in 1903 as in 1893. A few salient features of the conditions leading to the legislation of 1903 may, however, be briefly referred to.

The annual fluctuations in the gold value of the local money during the period 1891 to 1901 are shown in the following table.¹

RATES FOR BANK BILLS ON LONDON.

(Four Months Sight.)

YEAR.	HIGHEST.	LOWEST.	AVERAGE.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
1891	3 6½	3 1½	3 3
1892	3 1½	2 9½	2 10½
1893	2 9½	2 4½	2 7½
1894	2 3½	2 ½	2 1½
1895	2 3½	1 11½	2 1½
1896	2 3	2 1	2 2½
1897	2 1½	1 9½	1 11½
1898	2	1 10½	1 11½
1899	2 ½	1 11½	1 11½
1900	2 2½	1 11½	2 ½
1901	2 1½	1 9½	1 11½

The Straits Settlements were not, like India, practically forced to the establishment of a fixed par of exchange by the existence of a large public debt payable in gold. The Straits government itself had no public debt, while the small debt of the Federated Malay States was a local interstate debt, payable in the local silver currency. Both governments, however, regularly had large sterling obligations to meet in the purchase of supplies, while the salaries of all the higher officials of the Straits government were on a sterling basis.² Inasmuch as these charges remained relatively fixed regardless of the fluctuations in the value of the local dollar, while the gold value of the revenue received tended to fall rapidly with the fall of exchange, the government found itself handicapped in meeting its obligations.

The relative importance of the Straits Settlements' trade during the period from 1891 to 1901, with gold and silver countries

¹ Minutes of Evidence and Appendices of the Straits Settlements Currency Committee, p. 143.

² *Vide* Colonial Office List, 1903, pp. 309-311, and August Huttenbach, The Silver Standard and the Straits Currency Question, Singapore, 1903, pp. 9 and 10.

respectively, may be seen from the following figures representing imports and exports of merchandise inclusive of inter-settlement trade and exclusive of treasure.¹

TRADE WITH SILVER STANDARD COUNTRIES.
(\$,000 omitted.)

YEAR.	EXPORTS.	IMPORTS.	TOTAL EXPORTS AND IMPORTS.
1891	45,579	83,937	129,516
1892	48,140	93,946	142,086
1893	44,992	83,891	128,883
1894	53,771	94,068	147,839
1895	55,434	96,877	152,311
1896	57,079	96,260	153,339
1897	57,299	98,769	156,068
1898	64,747	98,615	163,362
1899	68,710	121,945	190,655
1900	76,294	135,402	211,696
1901	79,965	142,033	221,998

TRADE WITH GOLD STANDARD COUNTRIES.
(\$,000 omitted.)

YEAR.	EXPORTS.	IMPORTS.	TOTAL EXPORTS AND IMPORTS.
1891	68,910	44,895	113,805
1892	74,693	43,436	118,129
1893	89,538	68,547	157,085
1894	104,971	88,613	193,584
1895	105,394	88,468	193,862
1896	104,698	89,936	203,634
1897	114,878	99,591	214,469
1898	129,394	124,387	253,781
1899	157,145	133,346	290,491
1900	174,621	154,994	329,615
1901	176,808	150,776	327,584

While the figures show a healthy growth of trade in general, it is noteworthy that the greater proportion of the foreign trade

¹ Minutes of Evidences and Appendices of the Straits Settlements Committee, pp. 130 and 131.

at the close of the period was with gold standard countries, that the trade with those countries was a rapidly growing one, that its growth was more than commensurate with that with the silver standard countries, and that despite the severe handicap given to the import trade with gold standard countries by a falling exchange, the reported imports from those countries had been for some time larger than those from silver standard countries, while the growth of the former had been much the more rapid. As would have been expected on a falling exchange, the exports to silver standard countries lagged far behind those to gold standard countries.

While it is doubtless true that most of the trade with gold standard countries appears in the colonies' trade statistics, and that a considerable part of what Mr. August Huttenbach calls the "Hinterland trade" with silver countries does not appear, and that dollar for dollar the trade with the silver standard countries is somewhat more important to the colony than that with the gold standard countries, it is none the less true that the Straits' foreign trade both actually and prospectively should logically have placed it among the gold standard countries long before 1903.¹

One of the most serious disadvantages of the existing silver standard, the committee believed, was the discouragement to the investment of foreign capital in the colony, due to the apparent, and in many cases real, decline in the sterling value of capital invested in the colony.

These facts, together with the element of uncertainty and speculation brought into business by a fluctuating exchange, the feeling that exchange had fallen to the point beyond which a further fall would cease to be profitable to the export trade, and the movement on the part of neighboring countries toward a gold basis, forced the committee to the conclusion that the time was ripe for placing the Straits Settlements, the Federated Malay States and Johore upon a gold standard.

Three principal methods of making the change to the gold standard were considered. The plan suggested by the Sing-

¹ *Vide* on this subject August Huttenbach, Memorandum on the Straits Settlements Currency Scheme, Penang, August 10, 1903, pp. 2-3.

apore chamber of commerce in 1897 was believed to be impracticable for the reasons already stated. The introduction of the Indian currency system, which was recommended by five members of the local currency committee in 1893, involving as it did a change in the unit of value from the dollar to the rupee, the adoption of a currency which would be largely controlled by another country, and whose bullion value was far below its face value, found comparatively few supporters in 1893, whatever might have been the merits of the plan ten years before.

The plan finally recommended by the unanimous vote of the committee may best be briefly stated in their own words:¹

A special Straits dollar of the same weight and fineness as the British dollar at present current in the East [to be gradually substituted] for the Mexican and British dollars, the latter dollars . . . [to be] demonetized as soon as the supply of the new dollars is sufficient to permit of this being done with safety. Under this plan it will be necessary for the Straits to obtain a considerable supply of the new dollars, and as soon as this is received, the new dollars should be made full legal tender concurrently with the Mexican and British dollars, and steps should be taken to put them into circulation. The first supply of new dollars might be obtained . . . by remitting to one of the Indian mints a portion of the coin reserve of the currency commissioners to be melted down and converted into the new Straits dollars, and this process might be continued until practically the whole of the coin reserve is converted into new dollars. . . .

Simultaneously with the arrival of the first supply of the new dollars and with the making of them legal tender, the import of Mexican and British dollars should be temporarily prohibited and the export of the new dollars should also be prohibited. As there is ordinarily a large import of Mexican and British dollars into the Straits, and subsequent export of them, we think it likely that when their import is prohibited there would be a tendency toward a considerable drain of these coins from the Straits Settlements, and if the new dollars are freely supplied, the change of currency might be completed without any great delay.

When the currency is so largely composed of the new dollars as to justify the measure, the Mexican and British dollars should be finally

¹ Report of the Straits Settlements Currency Committee, May, 1903, pp. 12 and 13.

demonetized and the Straits Settlements would then be in the position in which India was when the change of standard was undertaken in that country, with, however, the very important advantage that there would not be an enormous proportion of the new coins either hoarded or circulating in foreign countries, which might, by being thrown into circulation, indefinitely delay the establishment of the gold standard.

After the Straits Settlements had arrived at this stage, the procedure might be exactly the same as it was in the case of India, *i.e.*, after sufficient Straits dollars had been coined to meet the requirements of business in the colony and the adjoining States, the coinage of dollars would cease until the exchange value of the dollar had reached whatever value in relation to the sovereign might be decided on by the government as the future value of the Straits dollar. After this stage is reached the Straits Government would issue the new dollars in exchange for gold, and at the fixed rate.

When the gold standard is established, it would not be indispensable that any gold coins should be made legal tender in the colony and the States. But the government should be prepared not only to give in exchange for a sovereign such a number of dollars as are hereafter declared equivalent to a sovereign, but also to give sovereigns in exchange for dollars at the same rate so long as gold is available, or to give bills on the Crown agents in London based on the fixed rate of exchange.

The committee expressed the opinion that it was "desirable that the standard of value and the currency of the Straits Settlements and the Federated Malay States should continue to be identical, and they hold the same opinion with regard to Johore."

The above recommendations of the currency committee were first published in Singapore on May 7, 1903, and were adopted *in toto* by the legislative council on May 29, and accordingly represent the law under which the new currency is established.

On September 25, 1903, an ordinance was passed authorizing the governor in council, subject to the approval of the secretary of state, to issue an order prohibiting the importing, circulating or holding in one's possession of certain coins to be specified in the order, after a date fixed therein, under penalty of heavy fines and the forfeiture of the coins thus illegally used or held.

As soon as it became evident that the importation of Mexican and British dollars into the Straits Settlements was likely to be

prohibited when the new Straits dollars began to arrive, sterling exchange rose in the Straits as compared with neighboring countries, and a strong tide of Mexican and British dollars began to flow from Hongkong, the Philippines, China, French Indo-China and other neighboring countries toward Singapore, in anticipation of the future prohibition of their importation and their redemption in the new dollars. The money market was so flooded with this money that considerable currency exportations were soon found profitable.

The new dollars began to arrive early in October, and the governor, pursuant to the authority given him in the ordinance of September 25, 1903, immediately upon the arrival of the first shipment of the new coins, issued an order prohibiting the exportation from the colony of the Straits Settlements dollar and the further importation into the colony of Mexican or British dollars. The new dollars are being coined at the Bombay mint, and since October 1 nearly every boat coming to Singapore from Colombo is said to have brought several hundred thousand of the new dollars. The money received is being placed in circulation through the instrumentality of the treasury and the banks.

It is yet too early to pass judgment upon the success of the scheme adopted, and prophecies with reference to currency problems in the Orient are exceedingly dangerous. Moreover the details of the methods to be adopted for maintaining the sterling parity when it once has been attained and for adjusting the currency supply to the demands of trade have not yet been made public. So far the Straits have simply begun to substitute one silver currency for another, and the colony will continue to be on a silver standard until the old local currency has been displaced by the new, and the new currency has been raised to a fixed sterling equivalent yet to be decided upon. This process anywhere would be a slow one; in the Orient, where custom and prejudice are such dominant factors in all matters pertaining to the currency, it is likely to be especially slow.

The promptness and ease with which the change will be effected depend very largely upon the future course of silver and the sterling par of exchange which the Straits government finally adopts. It is generally believed that the par of exchange fixed

will be two shillings. This is the rate that has been most persistently urged, a rate which would not materially alter the existing unit of account, or the more recently contracted long-time obligations, a rate in harmony with the units of neighboring countries, as for example, the Japanese yen, the Philippine peso, the French piastre, the Mexican and British dollars, and a rate easily assimilated to the currency of the home country. If silver should continue anywhere near its present price the silver content of the new dollar, moreover, would, at a two-shilling rate, be sufficiently large to offer little inducement to counterfeiting, and on the other hand, sufficiently below the nominal value of the dollar to offer little probability of its being melted down for bullion.

If silver falls so that it shall become necessary to raise considerably the value of the new dollars in order to bring them to the sterling par decided upon, the time required to effect the change will be a long one, and the monetary stringency, which will be a condition *sine qua non* to raising their value, will be severe; while the additional burden placed upon that part of the debtor class who have long-time obligations contracted at times when the monetary unit was considerably below the par of exchange fixed upon, and payable in the new and higher priced dollar, will be a heavy one, except in so far as it may be lightened by special legislation or by increased incomes (largely temporary) arising from the adoption of a monetary unit of account of a higher value. In these respects a low price of silver is likely to entail upon the Straits Settlements a repetition of the unfortunate experiences which India passed through during the period from 1893 to 1898.

During the time that the value of the new dollar is being raised above the value of the Mexican and British dollars, at a parity with which it shall have been permitted for a considerable time to circulate, great care will be necessary to prevent the illicit importation of these coins, which would tend to displace the new dollars and to prevent the realization of the currency scarcity necessary to raise the new dollar to the sterling par adopted. To prevent this contingency it seems quite probable, that if the Mexican and British dollars are materially cheaper in the out-

side market than the sterling value fixed upon for the new Straits dollar, it will be found necessary to put into effect the measures penalizing the circulation of the old currency, authorized in the ordinance of September 25, 1903.

If on the other hand the price of silver rises so that the market value of the old dollars is practically equal to the sterling value given to the new dollar, and if their value remains at this high point long enough to create a prejudice in favor of the new dollar and to establish in the business community the habit of using it, a subsequent fall in the value of the old money would leave the new dollar in possession of the field, and offer little inducement toward the illicit importation of the Mexican or British dollars. Under this contingency the penalizing of the circulation of the old money would probably be unnecessary.

E. W. KEMMERER.

MANILA, P. I., March 1, 1904.

TRIAL BY JURY IN GERMANY.

THE organization of the courts in Germany and the rules of procedure, both civil and criminal, are regulated by imperial law.¹ The ordinary courts are four in number and, taken in descending order, are the following: the *Reichsgericht*, the *Oberlandesgerichte*, the *Landgerichte* and the *Amtsgerichte*. There is but one *Reichsgericht*. Its seat is at Leipzig. With respect to the remaining courts, their number increases with the decrease in extent of their local jurisdiction, the most numerous being of course the *Amtsgerichte*. All the ordinary courts, with the exception of the *Amtsgerichte*, are collegiate, and all, without exception, have both civil and criminal jurisdiction.

Trial by jury is known, according to German law, only in criminal procedure and, further, is limited to cases which lie within the competence of a single court. This court is the *Schwurgericht*. It is not specifically mentioned in the law among the ordinary courts of Germany. At the same time it does not belong to what are known as "special courts." The law of judicial organization (*Gerichtsverfassungsgesetz*) provides for the erection of *Schwurgerichte* "bei den Landgerichten," i.e. at the seat of, and out of members of, the *Landgerichte*. These *Schwurgerichte* are not permanent courts. They are constituted periodically, their session, when not expressly fixed by state law, being determined by the state judicial administration (*Landesjustizverwaltung*). Strictly speaking, they belong to the *Landgerichte*. They are, in a way, secondary organs through which a part of the activity of the *Landgerichte* is manifested.

The *Schwurgericht* is composed of three learned judges and twelve laymen called to serve as jurors. The judges are appointed by the president of the *Oberlandesgericht* in whose jurisdiction the

¹ *Gerichtsverfassungsgesetz* of January 27, 1877, with amendments of May 17, 1898; *Civilprozessordnung* of January 30, 1877, with amendments of May 17, 1898; and *Strafprozessordnung* of February, 1877. In the notes these laws will be referred to as GVG, CPO and StPO respectively. For good discussions of the German judicial system, see Laband, *Deutsches Staatsrecht*, 1901, vol. iii, pp. 335 *et seq.*, and Garner, "The German Judiciary," *POLITICAL SCIENCE QUARTERLY*, vol. xvii, p. 490, and vol. xviii, p. 512.

court is erected. One of these judges, chosen to serve as president during the single session, is selected from the associate justices of the *Oberlandesgericht*, or from the members of the *Landgericht*. The other two judges are always taken from the *Landgericht*. The mode of selecting the jurors is set forth below. The jurisdiction of the *Schwurgericht* is limited to criminal cases and extends over all criminal cases for which the other courts are not competent. Broadly speaking, all the more serious crimes, with the exception of treason, are tried before the *Schwurgericht* and are therefore tried by jury.

I.

"The office of juror is an honorary office. It may be held only by a German."¹ The juror, therefore, receives no pay for his services. He may, however, without violating the law, accept such a refunding of his travelling expenses as state legislation may provide for. Before the law of judicial organization went into effect, the rule obtained, in several of the German states, that no man could serve as juror unless he were a subject of that particular state. The imperial law has removed this limitation. Any man possessed of citizenship in the Empire, no matter to which state he may belong, is competent for jury service, provided no question other than that of citizenship arises. The participation of a non-German as juror would render the proceeding void.²

In determining who may serve as juror, the law approaches the subject from the negative side, designating in the first place those who are incompetent³; in the second place, those who, though legally competent, should not be summoned; and in the third place, those who, though competent and summoned, may refuse the summons.

Under the first category may be grouped three classes of persons: (1) persons who have forfeited the right to serve, as the result of a criminal judgment; (2) persons against whom trial has

¹ GVG, sec. 81.

² The definition of a "German" is fixed by the imperial law of June 1, 1870. See, on effect of participation of a "Nichtdeutscher," Löwe, Komm. z. StPO, p. 52, note 3 to GVG, sec. 31.

³ By "competent" is meant legal competence merely. Mental or physical capacity is not drawn into question in this first category.

begun on a criminal charge which may lead to a divestment of civic honors (*Ehrenrechte*), or of the right to be invested with public office¹; and (3) persons who, as the effect of a judicial decree or order, are restricted in the disposition of their property.² These persons alone are incompetent. The category is thus narrowly limited, because the law would reduce to a minimum the number of cases in which the validity of a judgment may be contested on the ground of the participation of an incompetent juror.³

To the second category — *viz.* those who should not be summoned — belong two groups of persons, each group comprising several classes. The first group⁴ embraces: (1) persons who, at the time the jury list is made up, have not reached the full age of thirty years; (2) persons who, at the time the list is made up, have not resided two full years in the commune (*Gemeinde*); (3) persons who are receiving, or who have received in the three years immediately preceding the making up of the list, support from public charities for themselves or for their families; (4) persons who, by reason of mental or bodily infirmity, are incapacitated for service; and, finally, (5) servants (*Dienstboten*).⁵ The persons composing this group are to be eliminated in the interest of the administration of justice. They are persons who, by reason of their youth, dependent position or personal characteristics, cannot be assumed to possess the qualifications requisite for the proper performance of the functions of juror.

The second group in this category is composed of nine classes of persons, whose exemption is not in the interests of the administration of justice but in the interests of the public service, state or imperial.⁶ These classes comprise the following persons: (1) ministers of state; (2) members of the senates of the free cities; (3) imperial officials who at any time may be retired from active

¹ Disability begins only with the actual opening of the trial, *i.e.* at the moment when the man is "put in jeopardy." A preliminary examination or the mere fact of arrest does not effect such incompetence. See GVG, sec. 32, and Struckman und Koch, Komm. z. CPO, notes to GVG, sec. 32.

² This refers particularly to spendthrifts and bankrupts.

³ See Motiven, GVG, pp. 43, 44.

⁴ GVG, secs. 33 and 85, cl. 2.

⁵ No attempt has been made in the law to define this term "servant." The definition must be sought in the civil law and in custom. Such definition may, therefore, vary in different parts of the Empire. See Motiven, GVG, pp. 44, 45.

⁶ GVG, sec. 34.

service; (4) state officials who at any time may, by state legislation, be retired from active service; (5) judicial officials and state prosecuting attorneys; (6) ministerial officers (*Vollstreckungsbeamte*) of the courts or of the police; (7) persons employed in a public capacity in the service of religion; (8) teachers in the public schools; (9) military persons belonging to the active army or active marine. In addition to the persons above specified, the several states may designate, by law, certain higher administrative officials who shall not be summoned. Imperial officials may be excluded from jury service by state legislation.¹ Attorneys are not numbered among those who shall not be summoned to jury duty, nor are notaries, unless by the provision of a state law they are classed among the ministerial officers of the court.²

Under the third category, *viz.* those who, though competent and summoned, may refuse to serve, fall the following six classes of persons³: (1) members of a German legislative assembly; (2) persons who have already served as jurors during the year; (3) physicians⁴; (4) apothecaries who have no assistants; (5) persons who, at the time the jury list is made up, have completed the sixty-fifth year of their life, or expect to complete it during the course of the year; and (6) persons who present credible testimony to the effect that they are unable to bear the expense connected with jury service.

To sum up: the law, so far as eligibility and liability to jury duty are concerned, distinguishes three general groups of persons: (1) those who can not serve; (2) those who should not serve; and (3) those who need not serve. The participation of one of the first group renders the proceedings void. A non-observance of the law with respect to the second and third groups does not, in itself, involve such a result.

II.

While the empanelling of the jury is the first step in the actual trial of a specific case before the *Schwurgericht*, it is the last step in a rather complicated process of selection. This process is intimately bound up with the method of constituting certain mixed

¹ See GVG, Protokoll, p. 384.

² See Staudinger in the *Deutsche Notariat-Zeitung* for 1880, p. 195.

³ GVG, sec. 35.

⁴ Including dentists and veterinaries.

courts which I have not yet mentioned and which are known in the German judicial system as *Schöffengerichte*. It becomes necessary, therefore, to deal somewhat at length with these mixed courts.

The *Schöffengerichte* are courts which stand in much the same relation to the *Amtsgerichte* as that in which the *Schwurgerichte* stand to the *Landgerichte*. The *Schöffengericht* is made up of the judge of the *Amtsgericht*, as president, and two lay members, known as *Schöffen*, from whom the court derives its name. This court is competent to try minor offenses. No *Schöffe* serves more than five days in the year. A considerable number of men is therefore required during the year for the performance of the duties connected with this office. What has been said above with reference to eligibility and liability to jury duty applies also to the office of *Schöffe*. Inasmuch as the list of persons who are eligible to service as *Schöffen* is made the basis of the list from which the jury is finally selected, it is necessary to explain the process by which the *Schöffen* list is constructed.

The presiding official in each commune, or of such political corporation as corresponds to the commune in the administrative organization of the state, must each year prepare a list of those persons in the commune who may be summoned to serve as *Schöffen*, excluding of course those who are incompetent and those who should not be summoned, but not excluding those who may be entitled to refuse service. This list is exhibited for public inspection for one week, the date of such exhibition having been previously published. During this period of inspection, protests asserting the incorrectness or incompleteness of the list may be made in writing, or they may be made orally and recorded. Any person has a right to enter protest, whether he be the party affected or not.¹ The presiding official in the commune then sends the list, together with the protests and such remarks as the circumstances seem to demand, to the judge of the *Amtsgericht* in the district to which the commune belongs.²

¹ Should some one other than the party affected make the protest, as a rule a hearing of the party himself is required.

² Should the existence of further defects in the list be brought, no matter in what way, to the knowledge of the presiding official of the commune, he must notify the judge of the *Amtsgericht*, who shall make the necessary corrections.

At the seat of the *Amtsgericht* there meets yearly a committee composed of the judge of the *Amtsgericht*, as president, an administrative official of the state designated by the state government, and seven "trustworthy men" (*Vertrauensmänner*). These *Vertrauensmänner* are elected by the representative body of the district, as provided for by state law, and are to be chosen from the inhabitants of the judicial district of the *Amtsgericht*. Having satisfied himself that the requirements of the law with respect to the public inspection of the commune lists and the opportunity for protests have been properly met, the judge of the *Amtsgericht* combines all the commune lists handed in to him and lays the grand list thus formed before the committee. This committee — the president, the administrative official and at least three *Vertrauensmänner* being present — passes upon the protests made against the commune lists, and its decision, from which there is no appeal, is made a matter of record. From the "primary list," thus corrected, the committee chooses the requisite number of persons to serve as *Schöffen*. Inasmuch as the same qualifications are required for eligibility to jury duty and to duty as *Schöffe*, this primary list serves the double purpose of providing the names of those persons who may be summoned for either function.¹

Unlike the *Schöffen*, the jurors may not be chosen immediately by the committee. They are selected by a process which must be more fully outlined. Every year the number of jurors required for each *Schwurgericht*, and also the distribution of this number among the several *Amtsgericht* districts, are determined by the state administration of justice (*Landesjustizverwaltung*).² Out of the primary list from which it chooses the *Schöffen* for the ensuing year, the committee, at the same time, constructs a list of persons, whom it proposes for jury duty. This list of proposed jurors, which is called the "*Vorschlagsliste*," must contain three times the number of names assigned to the *Amtsgericht* district by the state administration of justice. This *Vorschlagsliste*, together with the protests relating to the persons named therein,³ is sent to

¹ The same person, however, may not be summoned both as juror and as *Schöffe* during the same year.

² The number will depend on the number of sessions to be held by each *Schwurgericht* during the year.

³ It is to be observed that the decision of the committee with respect to protests is final in connection with the choice of *Schöffen* only.

the president of the *Landgericht*. This official now calls a session of the *Landgericht*, in which five members of the court, including the president himself and four judges named by him, take part. The sitting is not public, nor is the presence of the clerk of the court necessary.¹ These five members of the *Landgericht* render a final decision with respect to the protests transmitted to them by the committee, and choose from the *Vorschlagsliste*, by absolute majority vote, two lists of jurors: (1) a list of chief jurors (*Hauptgeschworenen*), and (2) a list of substitute jurors (*Hilfsgeschworenen*). These two lists, known as "year-lists," are kept separate and distinct. The substitute jurors, whose duties will be explained below, must be chosen from among the persons living at, or in the immediate vicinity of, the place where the *Schwurgericht* has its seat.²

At least two weeks before the session of the *Schwurgericht* begins, in an open sitting of the *Landgericht* in which the president of the court and two members shall take part, and in the presence of the public prosecutor, thirty chief jurors are selected by lot from the year-list of *Hauptgeschworenen*.³ Jurors who have already served in an earlier session of the court during the same year are not, as a rule, subjected to the drawing; their names are again placed in the urn only upon their own motion. The list of thirty jurors is known as the "verdict list" (*Spruchliste*). It is put into the hands of the judge who has been appointed president of the *Schwurgericht* for the coming session.

The jurors drawn in the *Spruchliste* are summoned, by order of the president appointed for that session of the *Schwurgericht*, to appear at the opening sitting of the court; and they are informed, in the summons, of the legal consequences of a failure to respond. The summons is issued by and in the name of the public prosecutor. Jurors who do not appear at the proper time or who fail to obey the summons, without good and sufficient excuse,

¹ This fraction of the *Landgericht* is not to be confused with the *Strafkammer* or criminal chamber of that court.

² This provision is one of mere utility. Persons living in the vicinity of the court can be summoned with less delay, and can serve with less personal inconvenience, than could persons living at some distance from the seat of the court.

³ The lots are drawn by the president of the court, and a record is kept by the clerk.

may be fined in any sum from five to one thousand marks, plus the costs.¹

The various steps in the process of choosing jurors for any session of the *Schwurgericht* may be indicated, then, by the four lists which are formed: (1) the primary list of all persons who are eligible to serve; (2) the *Vorschlagsliste* of names proposed as jurors for the ensuing year; (3) the year-list of *Hauptgeschworenen* and the year-list of *Hilfsgeschworenen*; and (4) the *Spruchliste* of thirty chief jurors, from which the jury of twelve men is to be drawn for the trial of a specific case.

III.

The jurors named in the *Spruchliste* having responded to the summons, the president of the *Schwurgericht* makes known to them the name of the accused person and informs them of the nature of the act of which said person is accused. He then states the grounds upon which a juror is to be excluded from participation in a particular trial, and calls upon each juror to declare any circumstances which would exclude him from service in the cause about to be tried.² The omission of such a request on the part of the president will not support a demand for revision of sentence, unless it can be shown that a juror who should have been excluded actually took part in the trial.³ The president then calls the roll, and the names of the jurors present (leaving out, of course, any who should be excluded) are written upon tickets and deposited by the president himself, or by the clerk, in an urn. The law expressly declares⁴ that in no circumstances can the court proceed to the selection of a jury, unless at least twenty-four jurors are present who are qualified to sit in the case. This

¹ GVG, secs. 96, 56.

² It is assumed that no juror is present against whom a charge of incompetence would properly lie. That question has already been disposed of in constructing the year-list. The grounds of exclusion referred to in the text do not go to the competence of the person to serve as juror in any case, but only to the appropriateness of his serving in this particular case. Grounds of exclusion, e.g., would exist where a juror had an interest, direct or remote, in the case, or where he was related to one of the parties, etc. See StPO, secs. 22, 32 and 317, cl. 3.

³ See StPO, sec. 377, nos. 1, 2; Löwe, pp. 817-819.

⁴ StPO, sec. 280, cl. 1.

rule cannot be waived, even by agreement of the parties to proceed with a less number of names in the urn. Should it be found, upon counting the tickets, that there are not twenty-four jurors present and qualified, a sufficient number of names is drawn from the year-list of substitute jurors (*Hilfsgeschworenen*) to fill out the number to thirty.¹ The drawing is by lot and must take place in open court.²

If twenty-four or more names be found in the urn, the president states the exact number and informs the public prosecutor and the defendant of the number of challenges to which each is entitled. There may be as many challenges as the names in the urn exceed twelve in number. This rule, however, admits of an exception. For, in addition to the twelve who constitute the regular jury, one or more persons may be drawn by lot at the same time to act as supplementary jurors. These men sit in the case, take part in the trial, and have the same right in proposing motions as the other jurors. Under ordinary circumstances they are not allowed to retire with the jury for deliberation, and they do not participate in finding the verdict; but should one of the regular jurors be suddenly incapacitated for service, by reason of illness or from some other cause, his place is taken by a supplementary juror, and the trial (the necessity for a new one being thus avoided) proceeds without delay. It need hardly be said that, in such a contingency, the supplementary juror becomes a regular juror and participates both in the deliberation and in the finding of a verdict. When supplementary jurors are drawn, the number of challenges is reduced by as many as there are supplementary jurors chosen.³

¹ That is, at least seven *Hilfsgeschworenen* must always be drawn.

² Most of the German jurists are agreed that, if it appears that the requisite number of jurors will not be present on the opening day of the session, a number of substitute jurors may be drawn before that day, provided the drawing takes place in the court. This would save a subsequent delay. See Löwe, note 70 to StPO, sec. 280, cl. 2; von Schwarze, Komm. StPO, p. 444; Dalcke, Komm. p. 190; H. Meyer, in Holtzendorff's Handbuch des dt. Strafprozessrechts, vol. ii, p. 121; Keller, Komm. p. 359; Stenglein, Komm. p. 486, note 3; Isenbart, Komm. note 13 to StPO, sec. 280. For contrary view, Puchelt, Komm. p. 454.

³ For example, if one supplementary juror is to be drawn, there will be as many challenges allowed as the number of names in the urn exceeds thirteen. Each additional supplementary juror reduces the number of challenges by one.

The challenges are divided equally between the prosecution and the defense.¹ If there be an odd challenge remaining, it goes to the defense. Where there are several defendants, and no agreement can be reached among them as to the distribution of the challenges, the court divides the challenges due to the defense equally between the defendants, assigning the odd challenge, should one exist, by lot.

The names are drawn from the urn by the president of the court, in the presence of the defendant, of the prosecutor and of the clerk of the court. The name is at once read aloud, whereupon the prosecutor must declare, by calling out the word "*angenommen*" or "*abgelehnt*," his acceptance or rejection of the juror. Following the declaration of the prosecutor comes the declaration of the defendant. By the observance of this order the defendant is given an advantage; for, should the prosecutor reject a name which chanced also to be unacceptable to the defendant, the challenge of the defense is saved for subsequent use. The challenges are all peremptory. Causes for rejection may not be given. When a declaration is once made, it cannot be withdrawn if another name has been already drawn or if the drawing is ended. The drawing is ended when twelve men (thirteen, fourteen, *etc.*, if supplementary jurors are chosen²) have been accepted, or when the number of challenges has been exhausted.

The jury, including the supplementary jurors, is sworn, not as a body but individually, by the president in open court and in the presence of the accused. With the seating of the jurors, which takes place in the order in which they have been accepted, the court is ready to proceed with the trial.

An attempt to follow the procedure through its various stages would transgress the limits set for the present paper. A single word, however, must be inserted. When a witness is under ex-

¹ The number of challenges due the prosecutor is wholly independent of the number of defendants. The division is between the prosecution and the defense, not between the persons concerned. Where the word "prosecutor" is used in this paper, the public prosecutor (*Staatsanwalt*) is of course meant.

² Whether, and in what number, supplementary jurors shall be chosen lies wholly within the discretion of the court. The parties have no right to be heard in the matter, although it involves a material limitation of the right of challenge. See Löwe, notes 6 and 7 to GVG, sec. 194.

amination, any juror may request the president of the court to have a certain question or certain questions put to the witness. Such question must be put and must be answered, unless in the opinion of the president it be "irrelevant, incompetent or immaterial."

IV.

The case goes to the jury in the form of a list of questions which the jury must answer in bringing in its verdict. These questions are prepared by the president, and must "exhaust the indictment." That is to say, in framing the questions no material element of the crime with which the defendant is charged should be left out; for since the jury, in rendering its verdict, is confined to answering the questions submitted to it, a failure to incorporate in these questions certain essential elements might easily result in at least a partial acquittal. The decision of the question of guilt (*Schuldfrage*) in all its phases belongs to the jury alone. The exercise of the judicial power in such a way as to affect even indirectly, that is, by a manipulation of the questions, this function of the jury, would be regarded as an unwarrantable interference in the prerogatives of that body. It would amount to a participation of the court in finding the verdict, a practice which the law of criminal procedure excludes on principle in trials before the *Schwurgericht*. For this reason the law requires that the questions submitted to the jury shall cover all the material points in the accusation, not alone that the full measure of guilt may be reached, but that the determination of the existence and of the degree of such guilt may be made by the jury rather than by the court. A further safeguard is found in the right granted to the prosecutor, to the defendant and to each juror to move an amendment to the questions, either by way of correction or addition.¹ The questions are to be so worded that they may be answered by "yes" or "no."

Three kinds of questions are mentioned in the law²: principal

¹ A motion to include contingent or subsidiary questions can be denied only on the ground that the proposed question is not legally permissible, or is in content of no legal significance and can have no influence on the judgment. It should be remarked that a juror cannot demand the putting of a question relating to the existence of mitigating circumstances.

² StPO, secs. 293, 294, 295.

questions (*Hauptfragen*), auxiliary questions (*Hilfsfragen*)⁻ and subsidiary questions (*Nebenfragen*). The *Hauptfrage* must go directly to the question of guilt. It begins always with the words: "Is the defendant N. N. guilty . . . ?" and it must define the crime in the exact phraseology of the criminal law, as well as specify the elements which serve to identify the act, *e.g.* time, place and the person accused. The evidence, however, may develop circumstances and conditions which make it doubtful whether the degree of guilt is that asserted by the prosecutor. This makes it necessary to append to the *Hauptfrage* auxiliary questions, designed to fix the exact nature of the crime or, as the Germans express it, the "*Schuldform*."¹ These contingent questions are to be answered, of course, only in case the *Hauptfrage* is denied. Should it appear, further, from the evidence that circumstances exist which may affect the penalty, increasing or diminishing it, or which may, in fact, annul the penalty (*Strafbarkeit*) of the act altogether, subsidiary questions so framed as directly to develop these points must be appended to the principal or auxiliary question to which they are related. Each question, of whatever sort, must relate to one defendant only and to but one criminal act, even if several identical acts are charged. A failure to observe this rule will render the judgment void. All the questions are drafted by the president of the court and must be read aloud in open court. Should a motion to that effect be made by the prosecutor, by the defendant or by one of the jurors, the questions must be reduced to writing and a copy furnished to the prosecutor, the defense and the jury.² On request of these parties a brief recess may be taken for scanning the questions.

¹ If, *e.g.*, the defendant is accused of murder, and it appears from the evidence that he may have been guilty of manslaughter only, then an auxiliary question would be submitted to the jury: "If N. N. is not guilty of murder, is he guilty of manslaughter?" The decisions of the courts are not in accord as to the permissibility of such questions as the above. The latest decisions favor it, however, on the ground that in submitting such an auxiliary question no new and different act of the accused is brought under examination. Both *Hauptfrage* and *Nebenfrage* deal with an alleged killing. The difference is in the element of premeditation.

² A refusal on the part of the president will not render the proceeding void. The fact that copies of the questions are furnished to the parties and to the jury does not release the president from the obligation to read the questions aloud in open court.

When the questions have been definitely fixed, the arguments of the attorneys for either side are heard. These arguments must be confined strictly to the matters developed in the questions. Then follows the instruction (*Belehrung*) of the jury by the president of the court. In many of the German states it had been the rule, imitating the provision of the French law,¹ that the president of the court should prepare the jurors for a decision of the matter before them by a comprehensive presentation of the results of the evidence. The German code of criminal procedure, however, has preferred to substitute a simple final word of instruction regarding the law. In this *Belehrung* all discussion with respect to the value of the testimony presented at the trial, all reference to the weight which should be given to any evidence brought forward, is to be rigidly excluded. In the main the learned judge must confine himself to explaining the application of the criminal law involved in the case, to a statement of the meaning and bearing of the questions, and to such an exposition of the rules of criminal procedure as may seem by the circumstances to be required. The jury may also be reminded of its duties and the scope of its powers. In general, the theory on which the instruction is based may be summed up in the words of the motives to the code of criminal procedure, page 202: "The instruction should fix in the mind of the jury the particular status (*Lage*) of the matter which is to be decided." The instruction cannot be made the subject of argument by either party. What the attorneys may have said in addressing the jury is taken into account by the president only in so far as may be necessary for the correction of a false exposition of the law.²

Instruction of the jury is obligatory. That is to say, the president of the court has no option in the matter: he must instruct. It may happen, in simple cases, that no material exists for such instruction. In such a contingency, the president must formally state that fact. It is not permissible to substitute instruction given in an earlier proceeding. Should one of the legal points touched upon in the instruction be a disputed point, *i.e.* should jurists

¹ Code d'instruction criminelle, art. 336.

² A statement contrary to fact or a wrong quotation of the testimony by one of the attorneys is to be corrected, if at all, at the close of the argument.

and decisions differ on the question, the president must call attention to the fact and lay before the jury the different views held. He is also considered bound to give his own personal opinion on the point at issue. He may not, however, confine himself to the utterances of his own views.¹ Should a diversity of opinion exist in the court, the president is not to state this fact, but is simply to say that the point of law is not free from dispute.²

The instruction is not made a part of the record, though at the time the code of criminal procedure was framed it was attempted to incorporate such a provision in the law. Neither party has a right to move the recording of any part of the instruction. It follows, of course, from the fact that there is no documentary evidence to fix the content of the charge to the jury, that the judgment cannot be contested on the ground of anything contained therein nor on the ground of any omission. That, in his instruction, the president may have exceeded his authority or given a false interpretation of the law will not, therefore, support a plea for revision. Moreover, the jury is in no wise bound by the instruction of the presiding judge. On the contrary, according to the theory of the code of criminal procedure, the jury is called to take an independent part in considering the criminal law in the case.³ It is the function of the jury to decide not only whether the accused has been proven guilty as charged, and whether or not mitigating circumstances exist, but also whether the act falls within the definition of a crime under the law. As Löwe puts it, the jury must decide "über die Subsumtion der bewiesenen Tatsachen unter das Strafgesetz; sie entscheiden darüber: ob der Angeklagte *vor dem Gesetze* schuldig ist."⁴

¹ Compare here H. Meyer, in Holtzendorff, vol. ii, p. 187; Stenglein, note 1 to StPO, sec. 300; Dalcke, Fragestellung, p. 114; von Kries, p. 620. The writer follows the view of Löwe.

² The jurists are not agreed as to whether the president is not bound, should he find the other two judges against him, to give the opinion of the court, being then at liberty to add his own opinion. At any rate, it seems settled that he is under no obligation to ascertain whether a difference does exist in the bosom of the court.

³ See H. Meyer in Holtzendorff, vol. ii, p. 188; Stenglein, note 3 to StPO, sec. 300; von Kries, p. 621; also Dalcke, Fragestellung, p. 116.

⁴ In determining the powers of the jury, the StPO does not draw a sharp distinction between the decision of the question of fact and the decision of the question of law.

V.

Having completed his instruction, the president signs the questions with his own hand and delivers them to the jury. The defendant is removed from the court-room and the jury retires for deliberation.¹ All persons, including the supplementary jurors, are excluded from the jury-room. In cases of necessity an officer of the court may be admitted, but under no circumstances may the president enter the chamber. With respect to the admission of books, papers and other articles connected with the case, great diversity of opinion prevails. The law provides that "articles, which have been laid before the jury for their inspection during the trial, may be delivered to them in the jury-room."² Neither the decisions of the courts nor the views of commentators agree as to the content and extent of this rule. Practice also varies. In the debate over the framing of the law, it was contended without contradiction that it was permissible for the jury to send for law books, particularly for such books as the criminal code and the law of criminal procedure. The *Reichsgericht* has held that the delivery of commentaries to the jury is not to be allowed.³ In any case the jury has no claim either to the inspection of articles or to the consultation of books of law. The matter is wholly in the discretion of the court.

On reaching the jury-room, the jurors proceed to the election of their foreman. The law stipulates that the vote shall be by written ballot. The object of this provision is to prevent what takes place frequently in the organization of assemblies, *viz.* the election of a man merely because he chances to be nominated or proposed for it. A simple majority is sufficient to elect. In case of a tie, the vote of the oldest juror decides.

The code of criminal procedure makes no attempt to regulate the method of deliberation or of voting in the jury-room. The law of judicial organization, however, contains two provisions:

¹ The retirement of the jury is compulsory. The jurors may not, as in England and America, "render a verdict without leaving their seats."

² StPO, sec. 302.

³ Decision of Reichsgericht, II Strafsenat, April 20, 1886, reported in *Rechtsprechung des deutschen Reichsgerichts in Strafsachen*, vol. viii, p. 301. See also Reichsgericht I, November 29, 1886, *ibid.*, vol. viii, p. 721.

(1) that the order of voting shall follow that in which the jurors were drawn; and (2) that each juror must vote on every question. The foreman votes last. No juror may refuse to declare himself, even though the votes cast before his turn to vote is reached may already show a majority sufficient to decide. No record is kept, either with respect to the election of the foreman or with respect to the deliberation and vote of the jury.

It has been previously remarked that the questions are to be so framed that they may be answered by "yes" or "no." While the law, in conformity to this provision, declares that the jurors have to answer the proposed questions with "yes" or "no," a clause is inserted to the effect that the jurors "have the right to answer a question partly in the affirmative and partly in the negative."¹ The answer must leave no doubt as to which part of the question is affirmed and which denied. It is very evident that here is an opportunity for no end of confusion, especially when the questions involve relationships or deal with circumstances and conditions more or less intricate. Should doubt arise as to which part of a question is actually affirmed and which part denied, such doubt is not to be resolved by judicial interpretation. The jury must retire to deliberate again and to remedy the defect. No special formula is laid down for these cases of partial affirmation and partial denial. The Prussian law of May 3, 1852, article 91, prescribes the use of the words: "Yes, but it is not proven that . . ." This formula is generally recommended by German jurists.

The code of criminal procedure does not make it clear whether the jurors, in rendering their verdict, have not the right to go beyond the mere affirmation or negation of the questions. When this code was being debated in committee (*Justizkommission*) of the Reichstag, it was proposed that a clause be inserted as follows:

The jurors may append to their answers to the questions submitted to them special additions in the form of a more detailed explanation of those answers. The court, after hearing the public prosecutor, is to decide what importance is to be assigned to these additions and is to take them into account accordingly in pronouncing judgment.

¹ StPO, sec. 305.

The proposition was not adopted. Its rejection can hardly be justified from the standpoint of the general theory underlying the code of criminal procedure. This law assigns to the jury the decision of the question of guilt in its entire content. To limit the jurors, in rendering their verdict, to the mere content of the specific questions laid before them, to seek to withhold from them the right to examine the matter also from such points of view as have not been suggested in those questions, is therefore hardly in accordance with the fundamental principle upon which the function of the jury rests. Yet this is precisely the position into which the jurors are forced, by being compelled to confine themselves to answering the questions laid before them; and this is the cause of acquittals which the jurors neither justify nor desire.

It must not be inferred from what has just been said that, should the jury nevertheless append an explanation to the answer to a question, such an explanation may be regarded as non-existent and may be wholly ignored by the court. On the contrary, if it should appear from such an addition that the jury had misunderstood the question, the court must take cognizance of that fact, even though brought to its attention by an incorrect mode of procedure, and must send the jury back to their room for further deliberation. This whole question — whether the jurors may append explanatory clauses to their answers and what is the legal effect of such additions — is a matter of strenuous debate and disagreement.¹

The verdict is prepared by the foreman and must be so written down, in his own hand, that the proper answer is placed beside each question. It should be noted that the questions form an integral part of the verdict. The foreman must also sign the verdict.² A failure on the part of the foreman to sign the verdict will send the jury back for a correction of this defect.

¹ See Löwe, notes to StPO, sec. 305; von Schwarze, p. 470 von Bomhard, p. 227; Stenglein, Komm. note 7 to StPO, sec. 305; Hellweg-Dochow, p. 326; Isenbart, note 107 to StPO, sec. 305; von Kries, p. 625; also Keller, pp. 396, 406; Thilo, p. 364; Boitus, p. 321; Dalcke, Komm. p. 211, Fragestellung, pp. 130 *et seq.*; Puchelt, p. 487; H. Meyer, in Holtzendorff, vol. ii, p. 299.

² The verdict may be signed as a whole. Should the foreman, however, sign one answer, he must sign each of the others also; otherwise these latter are regarded as unsigned, and the verdict will be held incomplete by the court. It will not do to sign one answer and then sign the verdict as a whole.

The jurors have not the right, in place of rendering a verdict, to demand further evidence. Should they nevertheless make such a request, the court is at liberty to take cognizance of it and may re-open the trial. If the jurors, before the verdict has been announced to the court, feel that further instruction is necessary, a motion to that effect is made. The president recalls the jury to the court-room and imparts the desired instruction. A motion for such instruction must be transmitted to the president, if only a single juror considers it necessary. The individual juror must not be put in a position where he is compelled to vote on a matter with respect to which he believes himself incompetent to judge intelligently without further instruction.¹

A unanimous vote is not required in finding a verdict. The law² prescribes that for the affirmation of the question of guilt (*Schuldfrage*), a majority of two-thirds is necessary. That is, it takes eight votes to convict. If the vote, therefore, stands seven for conviction and five for acquittal, the defendant must be declared to be acquitted. The same majority of two-thirds is required for the affirmation of a question as to the existence of circumstances increasing the penalty (*Strafbarkeit*) of the offense. On the other hand, a question as to the existence of circumstances lessening, or wholly removing, the penalty is regarded as affirmed when only five vote "yes."³ A question relating to the existence of "mitigating circumstances," however, since it belongs to the domain of penalty (*Straffrage*) rather than to that of guilt (*Schuldfrage*) or penalty (*Strafbarkeit*), requires, for its denial, a simple majority. That is, seven votes will suffice to deny. In case of a tie on such a question, it is considered as answered in the affirmative. In connection with every answer unfavorable to the defendant it must be stated expressly in the verdict that the question was decided by the majority required by law. The court is thus in a position to determine whether the legal provisions have been met, or whether, on the other hand, the verdict may not set forth as affirmed a question which, under the law, should be

¹ LÖwe, note 1 to StPO, sec. 306; Keller, p. 397; Hellweg-Dochow, p. 327; Stenglein, note 2 to StPO, sec. 306; Bennecke, p. 608, note 10. The question is a disputed one. See, e.g., von Bomhard, p. 228; Dalcke, Komm. p. 208; Fragestellung, p. 117.

² StPO, sec. 262, cl. 1; and 297, cl. 2.

³ See RGer. IV, June 8, 1886; Rspr. in Strafsachen, vol. viii, p. 441.

regarded as denied, or *vice versa*. The actual vote, *i.e.* the exact number voting for and the exact number voting against, must not be given. The verdict must state simply that the question was decided by a majority of more than seven votes, or more than six votes, as the law may require.¹

VI.

The verdict is announced to the court² — the jury having returned to the court-room for that purpose — by the foreman, who must begin by reciting the formula: "Upon my honor and conscience I certify as the verdict of the jurors . . ." ³ He then reads the questions together with the answers. The verdict as read is signed by the president and by the clerk of the court ⁴ before it is made known to the defendant.

If the court — not the president alone — is of the opinion that the verdict does not fulfil the requirements of the law as to its form, or that it is obscure, incomplete or contradictory in substance, the president requests the jury to return to the jury-room to remedy the defect. Such an order is permissible so long as the court has not yet pronounced its judgment based on the verdict.⁵ Inasmuch as the content of the questions constitutes, at the same time, the content of the verdict, it makes no difference whether the defect attaches to the answers or to the questions.⁶ In the latter case, an amendment of the questions must be made.

¹ See, however, RGer. I, November 16, 1899; *Entscheidungen*, vol. xxxii, p. 372. An infraction of this provision would not entail nullity of the judgment.

² This announcement to the court is to be distinguished from the notification of the defendant. When the jury returns to the court-room for the purpose of announcing the verdict to the court, the defendant is not present.

³ "Auf Ehre und Gewissen bezeuge ich als den Spruch der Geschworenen . . ." The omission of this formula will nullify the proceedings. RGer. IV, December 22, 1880; *Rspr. in Strafsachen*, vol. ii, p. 661. Different opinion held by von Kries, p. 625.

⁴ StPO, sec. 308.

⁵ StPO, sec. 309. The fact that the president and the clerk of the court have signed the verdict does not prevent the correction of errors therein.

⁶ Thus the process of correction is set in motion if it develops that the questions have not exhausted the essential elements of the state of facts before the law (RGer. I, January 14, 1886, *Entsch.* vol. xii, p. 229, *Rspr.* vol. viii, p. 56, and RGer. IV, May 12, 1893, *Goldammer's Archiv*, vol. xii, p. 124); or that a question required by law has not been put (RGer. II, April 16, 1886, *Rspr.* vol. viii,

There is no express provision in the law for the case where the verdict itself does not show a material defect, but where nevertheless an explanation is given by the jury, or by one or more of the jurors, which suggests the existence of such a defect. A declaration of this kind certainly cannot be ignored by the court. For, as Löwe well says,¹ it would be in direct conflict with the end and aim of criminal procedure — *viz.* to establish the material truth of the matter — should the court base its judgment upon a verdict which, as the jury itself points out, is founded upon a misunderstanding or does not express the true intent of the jurors. The disregarding of such a declaration would be a subordination of law to form, whereas the function of form is merely to serve in the realization of the law. Moreover, the very nature of the procedure before the *Schwurgericht* — this rendering of a decision in the form of question and answer — enhances the liability to misunderstanding. For this reason the law allows the amendment of the verdict up to the very moment when the court pronounces its judgment. That a declaration or indication by the jury, or by a single juror, that a defect exists in the verdict must receive consideration, so long as judgment has not actually been pronounced, is a doctrine fully justified by the whole tenor of the law and by the principles of criminal procedure.²

p. 286); or that a question which should have been put as a *Hauptfrage* is put as a *Hülfsfrage* (RGer. II, March 20, 1891, *Entsch.* vol. xxi, p. 405). In these cases, however, such an error is set forth as would nullify the judgment. On the general subject of the process of correcting the verdict, see Freudenstein, in *Goldammer's Archiv*, vol. xxxiii, pp. 369 *et seq.*; Dalcke, *Fragestellung*, pp. 139 *et seq.*; Bischoff, in *Goldammer's Archiv*, vol. xlii pp. 1 *et seq.*

¹ Note to StPO, sec. 309. Compare also Dalcke, *Fragestellung*, p. 140; Bischoff, cited above, p. 5; Stenglein, notes 6, 7 to StPO, sec. 309; Isenbart, note 128 to StPO, sec. 309; von Kries, p. 625.

² Here belongs, in particular, the case where a juror declares that the verdict as read does not conform to the finding of the jury, or does not express it fully or accurately; or where it is declared that the verdict was not constructed in harmony with the provisions of the law with reference to the number of votes necessary. To these cases is also related the case where it appears, from the declaration of the jury or of one of the jurors, that the verdict or the vote rests on a misconception of the question, or that the jury has materially erred in its deliberation with respect to its authority and duties. See RGer. III, January 8, 1883; *Entsch.* vol. vii, p. 434, *Rspr.* vol. v, p. 19. In all these cases, a further deliberation is required in order to establish the true mind of the jury. Otherwise, however, if it appears from the declaration of the jury that the jurors merely had a wrong

If it appears that the defect is purely formal, and the jury, sent out to remedy it, undertakes a material change in the verdict, a judgment cannot be based upon the verdict thus amended.¹ If, however, the jury is ordered by the court to retire for the correction of a defect in the matter of the verdict, the jury becomes to such a degree possessed again of the whole material content of the verdict that it may amend even the answers not affected with error.² In other words, the jury has absolute freedom, in the correction of a material defect, to reconsider and reconstruct the entire verdict. Even if several offenses, independent of each other, are involved, the jury is not bound by any part of its original verdict.³ This holds where the defect consists merely in the omission of the answer to one of the questions.⁴ Nor does it matter whether the amendment is in favor of the defendant or to his disadvantage; e.g. the jury may affirm a *Hauptfrage* or *Hilfsfrage* which it had previously denied.⁵

It is the province of the court to determine officially whether the defect in the verdict does not arise from an error in putting the questions. If it appears that there is occasion for amending or adding to these questions, then is the court not in any wise bound by the deliberation of the jury which may have taken place in the meantime. New questions, both *Hauptfragen* and *Hilfsfragen*, may be put, provided that they would have been proper when the list of questions was first fixed.⁶

If the new verdict also shows a defect such as falls within the provisions of the law already discussed, a defect either in form or matter, the same remedial process must be repeated. Should the

conception of the effect of their verdict, or that they were influenced by a wrong interpretation of a material legal principle. Such declarations are not to be considered. See RGer. I, March 3, 1896; Entsch. vol. xxviii, p. 242.

¹ See StPO, sec. 310. ² See StPO, sec. 311; also Motiven, p. 204.

³ See RGer. II, April 26, 1887, Rspr. vol. ix, p. 287; RGer. IV, April 27, 1888, Rspr. vol. x, p. 349, *Goldsamers Archiv*, vol. xxxvi, p. 188; RGer. IV, January 24, 1890, Entsch. vol. xx, p. 188; RGer. IV, October 10, 1893, Entsch. vol. xxiv, p. 302.

⁴ RGer. IV, November 15, 1895, Entsch. vol. xxvii, p. 411.

⁵ RGer. IV, January 24, 1890, Entsch. vol. xx, p. 188.

⁶ RGer. III, October 13, 1880, Entsch. vol. ii, p. 361, Rspr. vol. ii, p. 332. The court may also re-open the case and hear testimony. See StPO, secs. 305, 243, cl. 3, and 245.

jury refuse to make such correction as the court considers requisite, then, since a defective verdict cannot support a judgment, the trial is suspended and the case must be reheard before a new jury. As to whether a stubborn jury may be fined by the court, under those sections of the law, already referred to in an earlier part of this paper, touching the punishment of jurors who neglect their duties, there is a great diversity of opinion.¹

If the court has erred in attributing a defect to the original verdict and has therefore wrongfully ordered a correction of the same, this wrongful procedure does not impair the rights, either of the defendant or of the prosecutor, arising out of the first verdict. Logically, the party injured by the action of the court has a right to contest the judgment based on the later verdict. In such a contingency, the revising judge is to determine "whether the original verdict was affected with an error requiring correction."² Such a determination is possible, however, only when the earlier verdict has been clearly preserved in making up the new one. Hence the law expressly provides, that "the corrected verdict shall be written in such a manner that the original verdict remains recognizable."³ Hence the first verdict may not be amended by means of penstrokes through clauses or words to be stricken out, nor by the insertion of words or clauses to be added. All those answers to which any correction is made must be written *de novo*, with a distinct reference to that part of the original verdict which it is the aim of the jury to alter.⁴

¹ Löwe, note 10 to StPO, sec. 309, holds that the jury may be fined. This is the view also of Dalcke, Komm. p. 212, Fragestellung, p. 142; of Thilo, p. 371; of Geyer, p. 766; of Stenglein, note 10 to StPO, sec. 309, Lehrbuch, p. 333; and of von Kries, p. 631, note 1. Keller denies the applicability of secs. 96 and 56, GVG, on which the above commentators rest their opinion, but he agrees as to the necessity for a new trial; see Keller, p. 405. Against the view of Löwe may be cited also: H. Meyer in Holtzendorff, vol. ii, p. 209; Isenbart, note 128 to StPO, sec. 309, who holds that the judgment must be pronounced even on a defective verdict; Freudenstein, *op. cit.*, p. 392; Bischoff, *op. cit.*, p. 16, who holds that a judgment of acquittal must be rendered, and Puchelt, p. 495, who says that the jury must remain in the jury-room until their task is properly accomplished.

² Motiven, p. 204. Compare RGer. III, October 13, 1880, Entsch. vol. ii, p. 361, Rspr. vol. ii, p. 332.

³ StPO, sec. 312.

⁴ See, however, RGer. III, April 30, 1881, Entsch. vol. iv, p. 122, Rspr. vol. iii, p. 257; RGer. III, May 24, 1886, Rspr. vol. viii, p. 383; RGer. II, December 16, 1890, *Goltdammers Archiv*, vol. xxxix, p. 56; RGer. II, September 24, 1895,

The new verdict must also be signed by the foreman of the jury.¹ When the jury has again returned to the court-room, the whole of the verdict — not merely the amended parts — must be announced to the court,² and the president, as well as the clerk of the court, must affix his signature, even though he may have signed the original verdict prior to the new deliberation of the jury. The defendant is now brought back into the court-room, and the verdict is made known to him by a reading of the answers to the questions, together with the declaration that they were made by the majority required by law. The reading is usually done by the clerk of the court.

If the court is unanimously of the opinion that the jury has, on the whole, erred to the disadvantage of the defendant, then the court, by decree and without giving the grounds of its decision, refers the case for a new trial before the *Schwurgericht* at its next session. In this matter the court proceeds on its own motion. Such a reference of the case is permissible up to the very pronouncing of the judgment. If several independent criminal acts or several defendants are involved in the case, then only those acts and those persons that are affected, in the view of the court, by the error of the jury are drawn into the second trial. In the new trial no juror may take part who has coöperated in rendering the earlier verdict.³ A case once referred for a second trial before another session of the *Schwurgericht* may not be referred again. In the new trial judgment must be pronounced, even if the verdict is regarded as erroneous.⁴

BURT ESTES HOWARD.

BERLIN, June, 1904.

Goldsamers Archiv, vol. xliii, p. 381. Here it is held sufficient if, by means of the record of the trial, the first verdict and the variations of the second are distinguishable.

¹ Unless the foreman has written in the new verdict over his former signature. See RGer. III, May 24, 1886; RGer. II, December 16, 1890; RGer. II, September 24, 1895; and RGer. III, January 12, 1885.

² RGer. IV, November 15, 1895, *Juristische Wochenschrift*, vol. xxiv, p. 592.

³ This does not apply to the supplementary jurors, who have taken part in the trial but not in the decision of the jury.

⁴ This is the view of Löwe, note 8 to StPO, sec. 317. There seems to be no decision of the *Reichsgericht* touching this matter.

MUNICIPAL CORRUPTION.¹

THIS is a work of a kind that was abundant in England during the eighteenth century but is now extinct there, while it flourishes in this country. Mental growths are no exception to the general laws of growth as regards distribution of species in time and space. Dying out in one region, a species may in another region find favoring conditions and perpetuate the type. In many respects the political ideas of our own times in this country reproduce species which belong to England's past. Mr. Steffens's work belongs to the same class as Burgh's *Political Disquisitions* published in 1774, Browne's *Estimate of the Manners and Principles of the Times* published in 1757, and innumerable tracts and essays now sunk into oblivion.

Mr. Steffens says of the articles collected in his book: "They were written for a purpose, they were published serially with a purpose, and they are reprinted now together to further the same purpose, which was — and is — to sound for the civic pride of an apparently shameless citizenship." Burgh said of his work that it was "calculated to draw the timely attention of government and people to a due consideration of the necessity and the means of reforming those errors, defects and abuses; of restoring the constitution and saving the state." Mr. Steffens puts the blame for misgovernment upon the apathy of American character. He says:

We are responsible, not our leaders, since we follow them. We let them divert our loyalty from the United States to some "party"; we let them boss the party and turn our municipal democracies into autocracies and our republican nation into a plutocracy. We cheat our government and we let our leaders loot it, and we let them bribe and wheedle our sovereignty from us. . . . We break our own laws and rob our own government, the lady at the custom house, the lyncher with his rope, and the captain of industry with his bribe and his rebate. The spirit of graft and of lawlessness is the American spirit.

In the same style Browne argued that virtue was rotting out of the English stock from the development of a sordid commercialism which was corroding all the moral elements which are the true foundations

¹ *The Shame of the Cities*. By Lincoln Steffens. New York, McClure, Phillips & Co., 1904. 306 pp.

of national greatness. The thought flows in the same channels, the same ideals preside over opinion, and the resemblance extends even to details of suggestion.

All we have to do [says Mr. Steffens] is to establish a steady demand for good government. The bosses have us split up into parties. . . . If we should leave parties to the politicians, and would vote not for the party, not even for men, but for the city and state and the nation, we should rule parties and cities and states and nation.

All this goes back to the time of Addison. In the *Spectator*, Number 125, Tuesday, July 24, 1711, he recommended that honest men should

enter into an association for the support of one another against the endeavors of those whom they ought to look upon as their common enemies, whatsoever side they may belong to. Were there such an honest body of neutral forces, we should never see the worst of men in the great figures of life because they are useful to a party; nor the best unregarded because they are above practising those methods which would be grateful to their factions. We should then single every criminal out of the herd and hunt him down, however formidable and overgrown he might appear.

One difference should be noted. It relates to temperament. American self-confidence and optimism make a distinctive mark lacking in the extinct English literature of this species. Mr. Steffens ends his sermon by saying:

We Americans may have failed. We may be mercenary and selfish. Democracy with us may be impossible and corruption inevitable; but these articles, if they have proved nothing else, have demonstrated without doubt that we can stand the truth; that there is pride in the character of American citizenship; and that this pride may be a power in the land.

This is a small set-off for such tremendous defects, but the tone of sentiment is hopeful and buoyant as compared with the gloomy forebodings which Burgh expressed in his closing reflections. He said:

I see the once rich and populous cities of England in the same condition as those of Spain; whole streets lying in rubbish, and the grass peeping up between the stones in those which continue still inhabited. I see the harbors empty, the warehouses shut up, and the shopkeepers playing draughts, for want of customers. I see our noble and spacious turnpike roads covered with thistles and other weeds, and scarce to be traced

out. I see the studious men reading the "State of Britain," the magazines, the "Political Disquisitions," and the histories of the eighteenth century, and execrating the stupidity of their fathers, who, in spite of many faithful warnings given them, sat still, and suffered their country to be ruined by a set of wretches whom they could have crushed.

Such were the opinions of English reformers on the eve of the wonderful outburst of national energy which created the British empire and brought to England wealth and prosperity beyond the imagination of the wildest dreamer. And yet the forecast was not wholly mistaken, for corruption and mismanagement lost England the American colonies and brought her to deep abasement before the evil generated its cure and the constitution was brought into accord with the needs of the state. But historians of English political development point out that the transformation was accomplished by the politicians themselves, without the adoption of the nostrums prescribed by the reformers and by the very means which the reformers denounced as the essence of corruption. The reformers sought means of administration by the people; the politicians denied them that, but unwittingly provided means of control by the people through the formation of an agency of legislative direction and management possessing plenary authority and hence complete responsibility. This went to the root of the trouble; for in retrospect it is plain enough that the systematic political corruption was the result of political confusion. The doctrine of the separation of the powers of government had obstructed the development of any such agency or organ of sovereignty, clothed with power to provide a proper division of the functions of government and to correlate the exercise of those functions. The actual embodiment of sovereignty which gradually took shape came not by deliberate intention but through the constraint of hard necessity.¹ The formation of the English parliamentary type of government may be described, in the terms of American politics, by saying that boss rule grew up inside the government until it acquired complete authority, thus bringing within reach of public opinion, through the suffrage, competent apparatus of control over the behavior of the government and creating conditions of political activity which gradually substituted the leader for the boss. The forces which sustained constitutional development did not proceed from reform agitation but from the phleg-

¹ Sir Leslie Stephen, in his *Hobbes* (The Macmillan Co., 1904), makes some acute remarks upon the unforeseen character of the English constitutional development. See particularly pp. 180, 181

matic common sense of the British people, more interested in results than solicitous about means and not prone to extravagant expectations from the every-day human nature which forms the stuff of politics. To take things as they are and make the best of them, to deal with situations as they arise by the means that are available, to endure what cannot be cured, to look upon the bright side and to cultivate a habit of cheerfulness — these are the traits of which sound politics are compounded and by which constitutional progress is sustained. National hypochondria is a worse evil than national corruption. Happily the American people are free from that at any rate; they are disgusted but not dismayed by the situation, and they have a deep conviction that they will eventually find ways and means of dealing with it.

Meanwhile it must be admitted that Mr. Steffens' book does not exaggerate the facts of the case. What he says about the condition of affairs in our cities is true, and much more might be said to the same purport. In this book he confines himself to municipal graft. The graft system extends to state administration also. The "organization" judge who "takes orders" is another feature of the graft system, the more dangerous since its virus penetrates the very marrow of our institutions. The facts with which Mr. Steffens deals are superficial symptoms. Hardly any disguise of them is attempted in the ordinary talk of local politicians. One of the first things which practical experience teaches is that the political ideals which receive literary expression have a closely limited range. One soon reaches strata of population in which they disappear and the relation of boss and client appears to be proper and natural. The connection between grafting politicians and their adherents is such that ability to levy blackmail inspires the same sort of respect and admiration which Rob Roy's followers felt for him in the times that provided a career for his peculiar talents. And as in Rob Roy's day, intimate knowledge finds in the type some hardy virtues. For one thing, politicians of this type do not indulge in cant. They are no more shamefaced in talking about their grafting exploits to an appreciative audience than a mediæval baron would have been in discussing the produce of his feudal fees and imposts. Mr. Steffens has really done no more than to put together material lying about loose upon the surface of municipal politics and give it effective presentation. The general truth of his statement of the case is indisputable. But the same might have been said of the exhibits of the eighteenth century English reformers; and yet the impression made by them of decay and disease in the body politic has since been shown

to be erroneous. The three stout volumes of Burgh's *Disquisitions* are crammed with accounts of bribery and corruption, making a more startling showing than that made by Mr. Steffens because more inveterate and extensive. Every part of the structure of government was involved, so that there appeared to be no spot of soundness where reform might find a lodgement and a starting point. Probably in every period of political transition, when an old order is giving place to a new, evidence of corruption has confronted the scrutiny of moralists. The formation of modern nationality itself originally wore the appearance of corruption to observers prepossessed by the ideals of the past. History has vindicated feudalism as a reparative process in the organization of society after the collapse of imperial rule. May it not be that the new feudalism which has developed in American politics, despite all its gross exactions of tribute, is also a natural development from constitutional conditions? When the English reform excitement was at its height, Hume acutely remarked that "those who complain of corrupt and wicked ministers, and of the mischiefs they produce, do in fact most severely satirize the constitution of the state, for a good constitution would exclude or defeat the bad effects of a corrupt administration." This is no more than saying that if a business is well organized, employees cannot steal without being found out and dismissed; but propositions which are obvious as applied to ordinary business affairs do not appear to be readily apprehended in relation to the public business, although there is no essential difference. Hume's opinion that the corruption of his times was due to bad conditions rather than to bad men turned out to be correct. It may be worth while to examine our own situation from this point of view.

Mr. Steffens gives blunt expression to the opinion that the typical American business man is the great source of municipal corruption. "He is a self-righteous fraud, this big business man. He is the chief source of corruption, and it were a boon if he would neglect politics." In his article upon "Tweed Days in St. Louis," Mr. Steffens says that "when the leading men began to devour their own city, the herd rushed into the trough and fed also." But in the same article, referring to the traffic in franchises, he remarks: "Several companies which refused to pay blackmail had to leave." In other words, conditions existed to which business interests had to submit or perish. The case does not suggest business initiative of corruption, but rather compliance with it upon the universal principle that if you want to do business you must meet the established conditions.

The nature of those conditions is not difficult to understand if one

is able to separate fact from fiction with regard to the suffrage. From the psychological principle of association of ideas it is difficult to separate anything in thought from the use it has served, and such has been the instrumental value of the suffrage that intrinsic qualities are habitually attributed to it of the most absurd character. The increase of literacy and the spread of agencies for diffusing information have imparted to the body politic in modern times a nervous organization unknown before, developing a public consciousness which is the true source of what is known as the democratic movement. The suffrage has played a wonderful part in serving the activities of this public consciousness, but it is merely a vehicle of impulse and its utility is strictly regulated by conditions. Want or desire does not alter in moral quality nor gain in real authority because it happens to be expressed through the suffrage. The right of the majority is a useful fiction as a rule of practical convenience, but if it is manipulated so that it is a pernicious humbug the appearance of corruption may be a healthy manifestation. Instead of being the betrayal of democracy it may be diplomatic treatment of ochlocracy, restraining its dangerous tendencies and minimizing its mischiefs. If any of our large cities should be preserved like Pompeii to remote ages, the archæologists of that period, even without any historic record, would be bound to conclude that the society which evolved such structure was not deficient in great qualities of character; and if some of the lamentations of our reformers should be disinterred, telling how the men of affairs in our times corrupted the government in securing opportunities of enterprise, most assuredly those archæologists would rejoice that they had done so. It is better that government and social activity should go on in any way than that they should not go on at all. Slackness and decay are more dangerous to a nation than corruption.

In order to appreciate the functional office of the suffrage, a clear distinction must be drawn between administration and control. As an instrument of administration the suffrage, from the nature of things, is of very limited value. What can be more absurd than to think that the average citizen, who finds it hard to judge of the qualifications of a clerk or a salesman or to pick out a competent servant for his household, can by any sort of political hocus-pocus be invested with the ability to make a real choice of governors, mayors, judges, clerks of court, district attorneys, sheriffs, constables, tax-collectors, assessors and school commissioners? It is obvious, when one discards cant and exercises common sense, that government by direct administration of the people cannot really be carried on except in small com-

munities, having common and well understood needs quite level with the ordinary capacity of citizenship. Communities in such a situation might just as well choose their officers by lot as by election, as was demonstrated in ancient Greek communities. But in any growing and progressive community diversity of needs and interest is inevitable and specialization of functions becomes necessary. Administration of the government by election then collapses, and the pretence that it is retained is constantly contradicted by actual facts. To assign to the people a power which they are naturally incapable of wielding is in effect to take it away from them. And this is the concise philosophy of boss rule. Genuine democratic government becomes impossible when the suffrage is applied to uses of which it is not capable; the practical result of the system of filling administrative posts by popular election is ochlocracy; and boss-rule is an expensive antidote for ochlocracy provided by the instinctive good sense of the American people. The system is as firmly based upon social necessities under existing conditions as the old feudalism which it resembles in its essential character. So long as those conditions, now inherent in our constitutional arrangements, continue to exist, so long will the boss system endure; and it will secure its revenues and emoluments, no matter how greatly they may be reprobated under the name of graft.

The general tendency of attacks made upon the system is to confirm it by aggravating the conditions which produce it. There are lower depths of corruption than those so far reached; and the movement for what is known as the direct nomination system is likely to sound those lower depths. That movement proposes to parallel the present system of filling a long list of administrative posts by popular election, by choosing party nominees also by popular election. It is seriously preached as a moral duty that the average citizen shall take the time to inform himself upon the personal qualifications of the various candidates, sometimes numbering fifty or more at a time. How does the obligation arise? If sociologists are not mistaken, the paramount duties of the individual man are grouped about the functions of subsistence and reproduction. Or, in every day speech, the chief duty of every man, as a member of society, is to earn his living and provide for his family. What political obligation can contravene this fundamental obligation? Are institutions made for the people or are the people made for the institutions? The latter appears to be the view of those laboring for direct administration, but no such palpable humbug can be foisted upon the people. The mass of the people will quite properly hold that they have more important things to attend to than

electioneering. They will leave that to those to whom it offers rewards. In practice the system will mean the legal establishment of gang rule. The law may provide equal terms but cannot provide equal conditions. It is obvious that if there were rewards for all comers two miles up in the air, only those able to get balloons would share in the distribution. Any free-for-all terms which election laws may make as regards nomination to office will be just as closely restricted to class opportunity. The crowning touch of absurdity and immorality is put upon the whole scheme by the assertion, sometimes made, that after the selection of candidates has been put in the hands of the people there will be nobody to blame if results are bad, since the people are entitled to bad government if they want it. Here is, indeed, a doctrine such as Burke would have called "a digest and an institute of anarchy." What is government for but the maintenance of justice? No more besotted claim of prerogative was ever advanced than that any body of men, however high they may heap voting papers in ballot boxes, have a right to perpetrate iniquity. A constitution which produces bad government is a bad constitution, and nothing can give it moral sanction. The extent to which such anarchic ideas prevail among reformers is a far more serious symptom of moral degeneracy than grafting. It is an aphorism of practical politics, for which a biologic explanation might be given, that the offices must bear the cost of filling them. The more elective offices the greater the cost of the government. So long as the people tolerate the system they will have to bear the expense, call it graft or what you will.

These views may appear cynical since they antagonize the political mythology now in vogue. The thought of the day is indoctrinated with the idea that, back of the real people one sees in the shop, the factory or the office, there is an ideal citizenship of great purity and intelligence which if brought into political activity would establish the integrity of our institutions. This hallucination energizes the direct nomination movement. The underlying purpose is to open free channels for the activity of that ideal citizenship. It is also traceable in the absurd importance attached to studies in the technique of government. The assumed existence of that ideal citizenship implies the need of educating it in its duties. Hence great effort is being made to spread the study of civics. Even lads whose chief interest in life is centered in their tops and marbles are considered fit subjects for cramming with civics. In this direction, the great superstition that education can create character as well as train faculties goes to its most extravagant length. But if we regard statecraft as an activity analo-

gous to other social activities, we shall not consider it an imputation upon the competency of the people to say that they are unfit to select their administrative officers, any more than it disparages the business capacity of the shareholders in a stock company to say that as a body they are unfit to appoint the clerks, book-keepers, salesmen and other administrative agents of the company. No sensible man will dispute the latter proposition. The essential principle of business control is universally recognized to be the delegation of administrative duties to a responsible management which, having full power, is subject to full responsibility for results. The notion that people should fit themselves for government by the study of civics is as if shareholders should qualify themselves in the practical management of the business of the corporation in order to secure proper administration of their interests. All that is necessary is an intelligent standard of requirement with a proper organization of responsibility, and the conduct of public business involves no different principles. Instead of the people themselves assuming the impossible task of looking after their servants and being continually fooled and bamboozled, they can turn that business over to a head servant and let him hire the rest and be responsible for them. We do this in the federal government but not in state or municipal government, and here the situation beautifully illustrates the Spanish proverb that the more you grasp the less you hold.

While the suffrage is incapable of serving as an organ of administration, it is capable of serving as an agency of control; but to be an efficient instrument of control, it must act upon some organ of government possessing administrative authority so complete that it may be held to full accountability for results. It is just because such an authority exists in Switzerland that that country is able to maintain such an advanced type of democratic government. Executive authority is so concentrated, and the connection between the executive and legislative departments is so simple, direct and immediate, that not even the mediation of party organization is needful to secure popular control over the conduct of the government. It is the principle of concentrated responsibility with which we are familiar as the basic principle of all business organization. In our governmental arrangements we have deviated from that principle by using the suffrage for administration. We have split up executive authority among a number of independent and coördinate administrative servants, who are practically irresponsible during their term of office if they are shrewd enough to keep out of the clutches of the criminal law. Thus they are put in a position to control the people instead of being controlled by the people. And

in employing the suffrage in its proper use for representation, we make it ineffective by disconnecting legislation from administration. We elect a mayor to represent the community as a whole, but we do not give him the right nor do we make it his duty to present the public business to the legislative branch or to bring it to decision. That is left to the good-will and favor of the representatives of localities. Why should we wonder if they turn such irresponsible power to lucrative advantage?

The growth of an extra-legal system of connecting the disconnected functions of government for administrative purposes certainly entails corruption, but it does not follow that under such circumstances it is disadvantageous although founded upon venality. Our ordinary system of municipal government is so opposed to all sound principles of business organization that it is highly creditable to our practical capacity for government that we are able to work it at all. The graft system is bad, but it is better than the constitutional system as established by law. Mr. Steffens himself supplies evidence upon this point. In Chicago, after a reform movement had triumphed, he says:

I found there was something the matter with the political machinery. There was the normal plan of government for a city, rings with bosses, and grafting interests behind. Philadelphia, Pittsburg, St. Louis, are all governed on such a plan. But in Chicago it didn't work. "Business" was at a stand-still and business was suffering. What was the matter?

Mr. Steffens goes on to say:

I spent one whole forenoon calling on the presidents of banks, great business men, and financiers interested in public utility companies. . . . Those financial leaders of Chicago were "mad." All but one of them became so enraged as they talked that they could not behave decently. They rose up, purple in the face, and cursed reform. They said it hurt business; it had hurt the town. "Anarchy" they called it; "socialism." They named corporations that had left the city; they named others that had planned to come there and had gone elsewhere. They offered me facts and figures to prove that the city was damaged.

It is possible that these business and financial magnates knew what they were talking about, and that it is better for a city government to lend itself to the operation of the forces of progress even through corrupt inducements than to toss the management of affairs out upon the goose-common of ignorance and incompetency, however honest. Reform which arrests the progress of the community will not be tolerated

long by an American city. On the other hand, it is quite possible that public men who have done great things by methods which have brought obloquy upon them may be esteemed when the results of their activity are appreciated. The people of Washington city now regard as a public benefactor a boss of this type and have recently erected a statue to his memory. Historians speak respectfully of one Julius Cæsar, who rose to eminence not upon the recognized lines of the constitution but as a popular boss. He is now credited with having done a great deal for his city and its dependent territories.

If these considerations are sound it may be fairly argued that they raise a greater mystery than they explain away. How is it possible to reconcile with the good sense and business capacity of the American people the growth of governmental arrangements so antagonistic to rational principles of organization? I confess that this phase of the problem has often puzzled me. Ordinary political theory is certainly oblivious of political fact to an astonishing degree. For instance, popular election of public treasurers is ordinarily justified upon the ground that it is necessary for the safety of the public funds to put them in the custody of an independent official not subject to removal by any other authority save the people themselves. The facts are all the other way. The public is not exposed to loss by the appointed treasurers of the United States, but it has lost millions through the elected treasurers of state and municipal governments. Although the growth of suretyship as a systematic branch of business enterprise is reducing risks of loss through absolute defalcation, yet those on the inside of affairs know that the manipulation of public funds in connection with elective fiduciary offices is an extensive department of the graft system, while this particular development of graft is unknown under the federal government. And yet these notorious facts do not perceptibly affect public adherence to the theory. At this very time the appointment of federal postmasters by popular election is receiving organized and influential support as a reform measure, despite every day experience of the fact that in practice this would mean irresponsible appointment by local bosses. A satirist might extract from American politics many fresh instances in confirmation of Robert South's opinion expressed nearly three centuries ago: "The generality of mankind is wholly and absolutely governed by words and names, without — nay, for the most part, even against — the knowledge men have of things. The multitude or common rout, like a drove of sheep or an herd of oxen, may be managed by any noise or cry which their drivers shall accustom them to."

But satire loses in comprehension what it gains in point. The persistence of ideas is an essential feature of the principle of social continuity which gives stability to political conditions. The ideas which have shaped our governmental arrangements are of the same class as those which were at the bottom of the past corruption of English politics. The derivation is distinctly traceable in our political origins. The check and balance theory of government which still controls our political thought was a colonial importation. Some perception of the true principles upon which democratic authority may be founded is shown in the *Federalist*;¹ but at that stage of constitutional development exact appreciation of those principles was impossible. Popular government was still undeveloped, and the principle of the separation of powers was not construed in its true significance as relating to the functions of government, but as an apportionment of power among classes and interests so as to confine prerogative upon the one hand and popular influence upon the other. The chief concern of the framers of the constitution was to erect barriers against democratic tendencies, and they used the check and balance theory for that purpose. As democratic tendencies gathered strength, they also settled upon the check and balance theory by natural momentum of thought, applying it to their own advantage. The class control which the gentry enjoyed under the closely restricted suffrage of the first period of the Republic was broken down by the extension of the suffrage and by the conversion of appointive posts into elective offices. The precautions taken by the framers of the constitution to secure executive unity proved so effectual that the latter movement was frustrated so far as the national government is concerned, but it has swept through state and municipal constitutions with increasing vigor until all the functions of government have been both disconnected and disintegrated in a way which leaves public opinion with no embodiment of authority capable of giving it complete representation or of assuming full responsibility for results. The stages of the process were not wholly disadvantageous so long as they were steps in the acquisition of power by the exponents of democratic tendencies, through partition of authority originally aristocratic in its tenure. But with the triumph of democratic principles of government, the partitions of power now useless as shelters from the class oppression against which they were reared,

¹ See particularly No. 70, a masterly argument on the thesis that "the executive power is more easily confined when it is one"; also, Nos. 47 and 48, wherein it is argued that separation of the powers of government does not mean their disconnection.

became obstructions which defeat democratic control by preventing its efficient exercise. No one now disputes popular sovereignty, but the people are in the position of the Grand Turk, who can cut off the head of an offender but whose affairs are so out of control that he is robbed right and left by his servants. What makes the situation more exasperating is that it is becoming a matter of common knowledge that democratic control is more complete and effective in some other countries than in our own; but the usual inference that we have somehow lost what our institutions were intended to secure is a fallacy. Our institutions have not lapsed from democracy into plutocracy; they never were democratic, and their present plutocratic character arises from the substitution of money power for the original aristocratic control. In other countries where democracy has arrived, it has not had to devise its constitutional apparatus but has had the far simpler and easier task of attaining control over that already in existence, whereas American democracy has never had a competent organ of authority. In developing such an organ we shall have to work out a constitutional application of the principle that division of the functions of government must be associated with administrative efficiency. The final result may be the formation of a new type of government. The exact form which it will assume it is now impossible to anticipate, but we can at least be certain from the very nature of sovereignty that there will be an organic connection of the executive and legislative functions. So long as the legal frame of government does not provide for that connection, it will take place outside of the legal frame; in which case we are in the habit of calling it the "machine" or the "ring" and of regarding it as a malignant excrescence upon constitutional government, whereas it is in fact the really constituted government, and the formal constitution is but a pretence and a sham.

The municipal situation is not really so desperate as one might think from a perusal of works like that of Mr. Steffens. Genuine improvement is going on through the undermining of our traditional constitutional principles under stress of practical necessity. In such charters as those of New York and Baltimore, the disconnection of the executive and legislative functions which is the root of ring rule is being practically overcome by the creation of boards of estimates and apportionment, which really unite executive and legislative powers in the same organ of government. Such appliances of government will gradually spread to other cities from the effect of example. In most cities, however, matters are likely to be worse before they are better; but even at the worst there are mitigating circumstances. Just as mediæval feu-

dalism was a powerful agency in binding together the masses of the people into the organic union from which the modern state was evolved, so too our party feudalism performs a valuable office by the way it establishes connections of interest among the masses of the people. To view the case as a whole, we should contrast the marked European tendency towards disintegration of government through strife of classes and nationalities with the strong tendency shown in this country towards national integration of all elements of the population. Our despised politicians are probably to be credited with what we call the wonderful assimilating capacity of American institutions. They are perhaps managing our affairs better than we are able to judge. We certainly do not know how to manage the politicians, but that is a branch of knowledge which no people acquires save as the result of a long course of education in the school of experience. There is no royal road to learning even for the sovereign people of the United States.

HENRY JONES FORD.

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REVIEWS.

The Police Power: Public Policy and Constitutional Rights. By ERNST FREUND. Chicago, Callaghan & Co., 1904. — pp. xcii, 581.

A distinguished writer has said that "the police power is the dark continent of our jurisprudence. It is the convenient repository of everything for which our juristic classifications can find no other place."¹ In his preface Professor Freund tells us that "the term police power, while in constant use, and indispensable in the vocabulary of American constitutional law, has remained without authoritative or generally accepted definition." When called upon to examine a new work upon the subject, therefore, the first questions one asks are: Has the author accounted satisfactorily for the lack of an accepted definition and has he in addition succeeded in formulating for us a definition likely to be generally accepted because it brings out clearly the meaning and scope of the term as it is used in our constitutional law?

Two methods may conceivably be used to attain to a satisfactory definition. One is to formulate the definition from a careful study of the cases; the other, first to formulate a definition by means of a philosophical analysis and classification of the powers of government in the abstract, then to show by a discussion of the cases that the definition so obtained is correct. Of these two methods, Professor Freund has chosen the latter, with perhaps not entirely satisfactory results.

Surveying the field from his chosen point of view, the author finds that the powers of government are to be grouped according to their purposes, and that "the great objects of government are three in number: the maintenance of national existence, the maintenance of right, or justice, and the public welfare." Under the first fall the creation of an adequate governmental organization, the management of foreign relations, the conduct of war, the suppression of insurrection and the provision for ways and means with which to accomplish these things by the exaction of service and the exercise of the rights of eminent domain and taxation; under the second, the administration of civil and criminal justice, primarily through the rules of the common law, supplemented however by statutory law; under the third, the improvement of social and economic conditions affecting the community at large and collectively, with the view to bring about the greatest good

¹ Burgess, *Political Science and Comparative Constitutional Law*, ii, 136.

to the greatest number. The police power, says Professor Freund, is the power to accomplish the purposes enumerated in the third group, *i.e.*, it is "the power of promoting the public welfare by restraining and regulating the use of liberty and property." After discussing the methods of the police power, the author sums up his conclusions upon this part of the subject as follows: "The police power aims directly to secure and promote the public welfare and it does so by compulsion."

Does this definition accord with the usage of the courts? Professor Freund makes no attempt to answer this, but assumes, without discussion, that it does. Is he justified in the result? It should be noted in passing that he interprets his definition as meaning that all laws which have the aim and which operate in the manner set forth are police laws. When, therefore, he comes to inquire into the location of the police power in the federal system of the United States, he finds himself led inevitably to the conclusion that, while "the bulk of the police power remains with the states, the federal government exercises a considerable police power of its own." As an example, he cites the power of the United States Congress to "prohibit and suppress objectionable forms of traffic," of course only so far as the traffic is interstate or foreign.

It may well be doubted whether this presentation of the subject will do more than add confusion to that which already existed. Granting that from the standpoint of the political scientist Professor Freund's definition of the police power is unassailable, does it help the student of our constitutional law to use it in the classification of laws, both national and state? Does a discussion of the scope and limitations of the police power of our states aid us much in determining the same things in the case of the so-called "police power" of the national government? Suppose we determine whether or not a state may constitutionally forbid the introduction from other states of lottery tickets; do we then know whether or not the Congress of the United States may do the same thing? Obviously not. The discussion of that question involves very different considerations. The law of Congress, if held constitutional — as it is, — is supported as a regulation of commerce among the states; the state law, if upheld, is classified as a valid exercise of the police power of the state. Professor Freund would classify them both as police laws, doubtless a correct classification, as has been said, from the point of view of political science, but of doubtful utility from the point of view of constitutional law. In other words, is it not better, from the standpoint of the lawyer, to discuss the question of the power of Congress to pass the law referred

to above, in a work on the commerce clause, rather than to attempt to deal with it in connection with the police power of the states? Because both laws accomplish the same purpose, it by no means follows that they are to be classified, from the juristic point of view, under the same heading.

Professor Freund's division of his subject, after he has disposed of these questions of a general nature, is interesting, and will doubtless meet with little, if any, criticism. "There are," he says,

broadly speaking, three spheres of activities, conditions and interests which are to be considered with reference to the police power: a conceded sphere affecting safety, order and morals, covered by an ever increasing amount of restrictive legislation; a debatable sphere, that of the proper production and distribution of wealth, in which legislation is still in an experimental stage; and an exempt sphere, that of moral, intellectual and political movements, in which our constitutions proclaim the principle of individual liberty.

This threefold division forms the basis for the analysis of the legislation which follows.

Limitations of space prevent even the mention of the subdivisions into which the main topics are divided. Doubtless here the author will encounter some adverse criticism, a necessary result, however, from the fact that the subject dealt with by the book is practically in its infancy. Under such circumstances the author is entirely justified in claiming the right to a considerable degree of independence in the classification and formulation of principles.

It would be difficult to praise too highly the scholarly and painstaking care with which the results of the cases have been analyzed and stated. The text is not, as in the average legal text-book, a mere stringing together of long extracts or mere condensations from the opinions of the courts, but forms a logical and connected discussion, the results of the cases and the principles upon which the courts based their actions being stated with a clearness and conciseness to be cordially commended to the writers of the text-books before mentioned. This method of presenting the subject has enabled the author to include in his discussion substantially all the important cases in both national and state courts. In addition, the book is well printed and bound, and is equipped with an adequate index which will add greatly to its usefulness. While, therefore, it cannot be truthfully said that Professor Freund has done all that is desirable in clearing away the mists which surround the

fundamental questions connected with his subject, the book is nevertheless far and away the best yet offered to the wanderers in the mazes of this branch of our constitutional law and is therefore an indispensable guide, alike for practitioner and student.

WALTER WHEELER COOK.

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The Harris Papers. Collections of the Rhode Island Historical Society, Volume X. Printed for the Society, Providence, 1902. — 410 pp.

The history of the New England towns during the colonial period is full of controversies over land and its boundaries. These controversies divided families and neighborhoods and towns, and were as persistent as similar disputes between colonies or the ever-recurring contests with royal officials. The talent for scheming and wire-pulling, the self-will and persistence which were often displayed in these disputes would have done honor to men whose parts have been played on the stage of national politics. Indeed, the "politics" of rural communities of those times owed its origin largely to questions of this nature.

One of the most famous controversies of this kind was that which agitated Providence and Warwick, Rhode Island, for more than a generation prior to 1680. The man with whom chiefly it originated, and who prolonged it till finally it cost him his life and a large part of his estate, was William Harris. In the older histories of Rhode Island he appeared in shadowy outline as, for some undefined reason, an opponent of Roger Williams. In recent years, however, the inquiries of Rider, Dorris and Richman have brought his personality out into much clearer relief. It has now become evident that, in merely town affairs, he was as prominent as Williams, while both by nature and by training he was a better political manager. A more litigious man it would be difficult to find in his day. The last thirty years of his life were devoted chiefly to one prolonged lawsuit, or succession of lawsuits, he and a few partners always appearing as plaintiffs. As the case proceeded it came not only before the Rhode Island court of trials, but repeatedly before special commissions, and before the King in Council. In its political aspects it came before the General Assembly. The town of Warwick, the town of Providence, and various individuals appear among the defendants. The question in dispute was always the location of the western bounds of Providence and the right to a

tract of land of many thousand acres — the Pawtuxet purchase — which lay adjacent to those bounds.

Harris's interest in these lands dated from 1659, when he procured from certain Indian chiefs confirmatory deeds for them. In the year following they were accepted by the town of Providence. Roger Williams and others, however, did not believe that they lay within the original town purchase, but that the Indians had been made the victims of a land-grabbing scheme. The town of Warwick also claimed a portion of the tract. Individuals occupied parts of it without the consent of Harris. Against these parties Harris and his partners instituted suits before the tribunals already mentioned. In the courts he invariably won, but the Williams party controlled the town of Providence. Its influence, with that of Warwick, defeated the efforts of Harris to get execution and thereby to oust the defendants from the lands. While on his second voyage to England, in the process of appeal to the King in Council, Harris was captured by Barbary pirates and taken to Algiers. After remaining there as a prisoner for about a year and a half, he was ransomed and finally reached England. But he was already an old man, and almost at once succumbed to age and to the privations which he had endured. After the death of Harris there was no longer hope of the success of his cause. The bounds of the Pawtuxet purchase, however, were not finally determined till 1712, when the lines were so run as to exclude from it the large tract which Harris had formerly claimed.

In this volume have been brought together with special care and editorial skill all known, and as yet unpublished, material which bears on this controversy and on the public career of William Harris. Mr. Richman, the historian of the founding of Rhode Island, has furnished an introduction. Mr. Brigham, the librarian of the state historical society, has done the chief editorial work. With the assistance of Dr. Frank G. Bates he has prepared a valuable map of Providence with the ancient place names. A list of these names, with explanations, is also given. A calendar of the events in the life of Harris and a good index complete the useful features of this volume.

In the text will be found the correspondence of Harris, so far as it has been preserved; the proceedings of the various tribunals which heard his case, and a succession of detailed statements of the points at issue in the case prepared by representatives of both parties.

HERBERT L. OSGOOD.

History of the United States of America. By HENRY WILLIAM ELSON. New York, The Macmillan Company, 1904. — xl, 911 pp.

Mr. Elson has written for the "general reader" a book that "falls between the elaborate works . . . and the condensed school histories," by which he means a narrative and critical account of the entire history of the United States in a single volume of about 400,000 words. He has aimed at "combining the science of historical research with the art of historical composition." He has attempted to "balance the narrative and critical features in intelligent proportion." He has "devoted much space to the life of the people." He has written without conscious bias, and "absolutely *sine ira*" (Preface).

So far as we can judge Mr. Elson has taken pains to make himself familiar with the latest results of historical investigation that have appeared in book form. It seems clear, however, that he is more at home in the national period than in the colonial and revolutionary periods, and that much valuable work buried in periodical literature has escaped his attention. There is evidence of this in the rather large crop of errors that may be gathered, as well as in some striking omissions which cannot be credited wholly to deliberate judgment. That a "feudal system" was established in America (p. 134); that Charles II had no "right" to take New Amsterdam (p. 139); that Louisiana was ceded to Spain by the Treaty of Paris of 1763 (p. 193); that the call for the first Continental Congress came from the "Sons of Liberty" in New York (p. 235); that the Jay treaty provided no recompense for the slaves carried off at the close of the Revolution (p. 357); that there is any doubt about the authorship of the Monroe Doctrine (p. 463); that Calhoun's change of views between 1817 and 1830 was due to thwarted ambition (p. 486); that Jackson's insight into human nature was "almost unerring" (p. 498); that Buchanan was the "victim of hypnotism" (p. 594); that the withdrawal of France from Mexico was due to American interference (p. 779); — these are examples of slips that are too frequent by far, though perhaps of no great importance in themselves. There are, however, errors that reveal lack of essential knowledge, rather than mere carelessness or lapse of memory. Mr. Elson is obviously quite unaware of any distinction between the Dutch "patroons" and the large landowners of the English period. "The patroons became the founders of the great families, afterwards so prominent in New York — the Van Rensselaers, the Schuylers, the Livingstons, and others." "The great estates . . . were held in the same families for more than two centuries" (p. 134); "The patroon

system, which continued all through colonial days and far into the national period" (p. 203) — these sentences reveal a lamentable lack of knowledge of certain features of colonial New York. Mr. Elson, again, represents Washington's army as "fleeing like the hunted fox across the Jersey plains" (p. 261). This is more than a mere rhetorical exaggeration, for it indicates, what is sufficiently clear throughout the chapter, that Mr. Elson is unconscious of one of the great problems of the Revolution — the problem of Howe. The reader should remember that if the American army was "fleeing like the hunted fox," the British regulars at any rate were following leisurely enough — seven days from New Brunswick to Trenton! Of the regulator insurrection in North Carolina, it is said that in 1771 Governor Tryon fired upon the "people who had organized as 'regulators' to maintain public order" (p. 230). After this one is not surprised to find this sentence making part of a paragraph on the causes of the Revolution, the other part being an account of the Boston Massacre!

In a work of this kind the author's sense of proportion, of relative values, should be sure. Mr. Elson's sense of proportion, however, is extremely faulty. Although he says that much space has been devoted to the "life of the people," we find in fact that military events have received most attention. For the period between 1765 and 1900, there are 271 pages devoted to the 16 years of war, exclusive of the discussion of causes, and 420 pages to the 119 years of peace. Subjects as important as loyalists, amendments, migration to the West, Clayton-Bulwer Treaty, *etc.*, are relegated to the "notes and anecdotes." Four pages are given to Columbus's first voyage; a half page of notes to the achievement of Balboa, Magellan, DeGama, Cortereal, Cortez and Pizarro. That the discovery of America was a gradual process covering nearly a century, of which the voyages of Columbus were only a part, is nowhere so much as hinted. Twelve pages are required for the march of De Soto; less than a page of notes contains all that one learns of Narvaez, De Vacca, Coronado and Cartier. More than a page for Pocahontas; nothing for the origin of local government in Virginia. Besides, there are subjects of prime importance that are omitted wholly, or nearly so. The political aspects of Puritanism, the origin and essential character of the colonial charters, the growth of English institutions for colonial control, the conservatism and loyalist attitude toward the Revolution, the significance of Howe's military "blunders," the constitutional importance of the Louisiana purchase, the importance of the work of John Marshall, the negotiations that led up to the annexation of Texas, Calhoun's "nationalization" of the slavery question by

his famous letter to Pakenham in 1844, and above all, the transcendent importance of westward expansion — these are some of the important things that Mr. Elson practically leaves out altogether.

Aside from these matters, Mr. Elson, we take it, exhibits no keen insight into the meaning of periods or movements, no scholarly grasp of the subject as a whole. His best work is in the narration of spectacular events, like the march of De Soto (chapter iii), or in the characterization of certain men with whom he is not too much in sympathy, like Washington (p. 361). The treatment of institutions is ordinarily inadequate and always conventional. In describing "colonial government" (p. 210), for instance, one notices that while the "able articles" of Professor Osgood are referred to, they are apparently misunderstood, and the description follows the old conventional lines in the main. The "criticism" which Mr. Elson promises us in the preface rarely rises above the commonplace; it never by any chance reveals originality. Criticism, indeed, with Mr. Elson, seems to consist largely in fixing the "causes" of great events and the rank of great men. A good illustration is the discussion of the causes of the Civil War (pp. 624 *et seq.*). What was the cause of the War? Slavery alone. Some say, states' rights. But what gave rise to the questions of states' rights? Slavery. Others say secession. But what caused secession? Slavery. Others say economic conditions. True, but these would have produced no war except for slavery. And so on: all very true, but quite useless. Slavery, we are left to suppose, was the great primal uncaused cause. Mr. Elson's criticism, too, is quite as likely as not to reflect his prejudices. We are to suppose that the Puritans, striving for religious liberty in England against "cruel," "despotic" and "bigoted" tyrants, are to be admired; but Roger Williams, striving for religious liberty in Massachusetts, is censured for "preaching revolution," and we are carefully reminded that no reproach can justly be directed against New England for the witchcraft delusion (pp. 98, 103, 109, 110). Likewise there is nothing to be said for the "slaveholder," except that he was "shrewd," "audacious," *etc.* His shrewdness, however, availed him little in a conflict with "the people," for when "the people" took the matter in hand by the "founding of a new political party" the doom of the "slaveholder" was sealed. Besides, he made one serious blunder, in allowing the matter to be appealed to the sword, *etc.* (p. 625). As a final instance of Mr. Elson's weakness in "criticism," we refer the reader to the attempt to rehabilitate the long defunct Pocahontas myth, in which there is involved, in a brief argument of three points, false historical method, ignorance of the defect of the logic (pp. 63, 64).

From the point of view of "historical research" it must be said that Mr. Elson has achieved a very indifferent success. As an example of the "art of historical composition" (Mr. Elson speaks of his attention to style three separate times in the preface) the book is equally open to attack. The immediate meaning is conveyed with sufficient clearness. There are, here and there, pages that are well done. But taken as a whole the style is without distinctive merit. It does not possess originality, dignity, force nor strict accuracy. Of more difficult attainments, such as logical continuity in sentence building, or coherence in paragraph construction, there is but little evidence.

The reviewer sympathizes with Mr. Elson's ambition, and has nothing but praise for his industry. But in all sincerity the reviewer believes that Mr. Elson has failed to realize the difficulty of the task or his own inability to perform it satisfactorily.

CARL BECKER.

UNIVERSITY OF KANSAS.

The Opening of the Mississippi. A Struggle for Supremacy in the American Interior. By FREDERIC AUSTIN OGG. New York, The Macmillan Co., 1904. — 670 pp.

While the subject of this book is comparatively a narrow one, the treatment of it is such as to have broadened it, not "here and there" as the author remarks in his preface, but almost throughout, into "an attempted history of the Mississippi Valley." After a few introductory words about the importance of this region, Mr. Ogg devotes four chapters to the story of its discovery and exploration, with the great river as his central theme, more or less. He then describes the foundation of Louisiana, its place in the European issues of the eighteenth century, and the process by which the United States secured the free navigation of the Mississippi in 1795. The last two hundred pages of the work are given over to an account of the Louisiana Purchase, its immediate antecedents, and the establishment of American rule in the territory up to 1815. The text of this portion of the volume is little more than a series of abstracts from Henry Adams's work.

A fair judgment of a book that is at once more than "timely" and less than scholarly, is difficult to render. The ordinary paste pot and scissors are not much in evidence. The ambition of the author to rise beyond the level of mere "timeliness," his wide and industrious reading, and the copiousness of his references merit acknowledgment. The bracing of every important statement with a solid array of authorities is usually a sign of diligent research, but not always one of historical

utility. The citation of references in the book under consideration, inclusive even of "popular histories," text-books and journalistic productions, is pedantic at times to the extent that, apparently, Mr. Ogg has wished to mention almost all works ever written on the particular topic. Mere lists of books in foot-notes are obtrusive and wearisome enough to the general reader, and not at all satisfactory to him who may wish to broaden his reading intelligently. The scholar, on his part, demands a careful discrimination in the selection of materials, and a proper personal estimate of the value of each authority consulted.

The book abounds in explanations of trite facts and in more or less irrelevant digressions on the general history of the Mississippi region, the English colonies and international affairs in Europe. Nor are positive errors infrequent. To mention a few examples of such defects: the account given of the Indian troubles in the West after 1763 is interesting, but not pertinent to the main theme. The same might be said of the rather unctuous recital of the Napoleonic "bath-tub episode" (pp. 523-28). There was no struggle between Frederick the Great and Maria Theresa over the claim of the latter to the "Austrian throne" (p. 245). The "prime objects" of the British government in 1755, with all their warlike aspects, are attributed to that pacific statesman, Walpole (p. 267). Joseph de Galvez, the uncle, and not the father of Bernardo de Galvez, is represented as being the viceroy of Mexico and the president of the Council of the Indies at the same time (p. 367). Errors are common in the statements concerning the Family Compact of 1761 (pp. 286-87), the cession of Louisiana to France in the following year (pp. 287-88), and the share of Wilkinson in the intrigues for severing the West from the Union (pp. 442-44). "The province of Louisiana," also, was not "destined to be handed back and forth among the nations yet several times," after 1762, "before it should find its permanent place under the flag of the United States" (p. 341). It was "handed forth" but once.

Whatever value the book possesses lies merely in its attempted concentration and combining of various well-known facts in the treatment of a single topic. Had the author confined himself strictly to that topic, and converted his bibliographical foot-notes into critical appreciations of his authorities, *The Opening of the Mississippi* might have been a useful addition to the literature of American history.

WILLIAM R. SHEPHERD.

The Place of Compensation in Temperance Reform. By C. P. SANGER, M.A. London, P. S. King & Co., 1901. — vii, 135 pp.

The Case for Municipal Drink. By EDWARD R. PEASE. London, P. S. King & Co., 1904. — viii, 169 pp.

The problem of compensation for displaced publicans occupies an important position in every practical discussion of temperance reform in England which contemplates a reduction of the number of licenses. The conditions of the traffic in that country are vastly different from those in the United States, and only the radical minority take the strictly legal ground that the state is under no obligation to the liquor dealer after the expiration of the term for which his license is granted. Mr. Sanger's book is an English lawyer's brief for full compensation either in money or by such an extension of the license-holders' term that no financial interests would be disturbed seriously. He lays the basis of his argument first in political theory, and, after an examination of the doctrines of Austin, Bentham and Sidgwick, he arrives at the conclusion "that in every case where there is great disappointment of expectation by the legislature, there is a *prima facie* case for compensation." Mr. Sanger then makes a short review of the important English precedents, showing the uniform practice of the legislature in allowing compensation even where the disappointed expectation was based upon criminal acts. The precedents of other countries are dismissed with a brief notice, those of the United States with the conclusion that "to argue from the case of a nation whose legislatures enact laws which are not intended to be enforced to the case of this country would be fruitless." The third chapter is devoted to proving that the expectation which the license carries with it is such that the legislature can find practically no more justification in cancelling it without compensation than in confiscating any other form of property. Mr. Sanger demonstrates by legal decisions, insurance rates and ~~statistics~~ that the probability of the renewal of licenses is extremely high — in fact almost a "practical certainty." On the basis of this "practical certainty," argues the author, capital is invested, mortgages are taken, death duties are collected and the financial operations of a vast number of people are carried on. In short, by long continued policy, the state transforms a legally terminable license into a more or less permanent form of property, and should not suddenly reverse that policy without compensating those who derive or expect to derive revenue from its continuation. The fact that the license is not prop-

erty in the full sense of the term, the author offsets by the contention that expectations and customary rights not recognized by law are constantly being compensated. The proposals and opinions of prominent public men are reviewed in chapter five and in conclusion the basis and sources of compensation are considered. Mr. Sanger believes in full compensation except where part of the value of the license arises from illegal selling — a concession as amusing as it is futile. As an alternative to money compensation, the author suggests that all licenses might be made terminable in thirty years without any considerable loss to the holders. Time seems to be the source of compensation which most reformers agree upon, but few of them contemplate a period of thirty years. The term in South Australia is fifteen years, and, while the liquor traffic is more strongly entrenched in England, it may well be doubted whether Mr. Sanger will succeed in convincing any large proportion of those who really carry temperance measures to victory in Parliament.

Mr. Pease's book is a Fabian argument for the municipalization of the drink traffic. It does not pretend to be an original contribution to the literature of temperance reform; it is a concise statement of the case designed for political purposes. The author does not agree with those who believe that the consumption of intoxicants is inherently evil, and he indulges in no optimistic fancies as to the effect of municipal control in reducing the amount consumed. He believes that the right temperance policy is to replace spirits with beer and improve the conditions of supply, but he regards the financial argument for municipalization as the decisive one. He would have municipal ownership for the prime purpose of securing to the public the enormous profits of the liquor traffic. Mr. Pease is not pessimistic as to the outlook for temperance; he thinks that its promotion may be safely left to moral agencies aided by municipal counter attractions, but he wants no patronage of drinkers by superior persons with schemes to "elevate" the lower classes. The author does not share the widespread belief that English drinking habits are to a great measure responsible for the losses in the race for markets; he points out that some of the chief competitors drink as much net alcohol. A large portion of the book is devoted to a discussion of the need for reform, high license, local veto, prohibition, state control abroad, and the experiments in company management in England, resulting in the conclusion that municipalization is, for moderate reformers, the only alternative. The plan of municipal control which Mr. Pease suggests is extremely flexible. He does not propose to make the assump-

tion of public ownership immediately complete or compulsory or the control a monopoly. He would have Parliament empower local authorities to make a large range of experiments and extend their operations according to practical results. As to compensation, Mr. Pease seems to think ten years' purchase of the annual value of the license would constitute a fair remuneration for those displaced at once. The complicated problems of administration and the dangers of corruption, he regards as no greater than those at present connected with municipal undertakings.

CHARLES A. BEARD.

The Negro Artisan: A Social Study, made under the direction of Atlanta University by the Seventh Atlanta Conference, and edited by W. E. BURGHARDT DU BOIS. The Atlanta University Press, 1902. — viii, 192 pp.

Of the total number of negroes in this country nearly 90 per cent are engaged either in agriculture or domestic service. Roughly speaking, about five per cent are skilled workmen, as against nearly 20 per cent for whites. Inasmuch as the vast majority of negroes live in the South and the South is developing many industrial interests besides agriculture, it becomes especially important to know what is happening relative to the artisan class of negroes.

This pamphlet is packed with information on that topic, much of it possessing deep interest for the general public, though perhaps most of it is too detailed and complicated to be useful to any save close students. The arrangement, however, is such that the general reader can readily get what is desired without troubling himself about more intricate portions. The study is divided into 64 sections, and at the outset notice is given to the reader pointing out what sections are of general interest.

Statistics are a prominent feature, numerous tables being presented which have reference to industrial training for negroes, their occupations, the distribution of the negro artisan throughout the United States, the gain or loss in numbers in various localities, *etc.* Perhaps more interesting, if not equally valuable, are the historical portions in which the career of the negro artisan class is sketched and also the development of his industrial education. The latter topic is quite fully treated: the curricula of industrial schools, for example, their number and cost, their strength and weakness, and their practical results are set forth. The relations of the negro artisan with trades unions are ex-

amined, and some significant information is furnished. Similarly as regards his relations with the employing class. In a word, it would be difficult, if not impossible, to find elsewhere within equally small space more useful and important knowledge relating to this race in America.

The reliability of no small part of the data collected is seriously to be questioned, *viz.* such data as were secured by sending out to hundreds of individual negroes a schedule of questions. In the first place, how far can we trust the accuracy and fidelity to truth of the answers, when the plain intent of these is to reveal whether the individual concerned has led a creditable life or not? Manifestly there would be an almost irresistible impulse to state only what was creditable and to omit equally important facts that did not appear well. In every case possible, it is true, efforts were made with fair success to verify the answers made by reference to other witnesses, such as fellow-workmen, employers and others in the community. Nevertheless a wide margin of error must inevitably be suspected in the results of such a method. In the second place, it is a very grave defect of this method that precisely those who cannot make a good showing will not be heard from, since they will not choose to report themselves. Thus it happens that, in working out the results, it is actually a sifted class that is dealt with, and not the indiscriminate mass.

Every one deeply interested in our negro population hopes to receive favorable light from each new work bearing upon them. A careful consideration of this study and of its cautious and very fairly stated conclusions leaves one with the feeling that after all we are by no means assured of the negro artisan's industrial safety and upward progress. For instance, we are told in the principal paragraph of the summary that

There are a large number of negro mechanics all over the land, but especially in the South; some of these are progressive, efficient workmen. More are careless, slovenly, and ill-trained. There are signs of lethargy among these artisans and work is slipping from them in some places; in others they are awakening and seizing the opportunities of the new industrial South.

We are told further in the summary that the slave-artisan was "for the most part careless and inefficient," a first-class mechanic being the exception; that industrial training is badly needed, and is costly; that the prejudice of trades unions keeps the mass of negroes out of many trades; that "employers on the whole are satisfied with negro skilled

labor," while there is a divided opinion as to the practical value of industrial education; and that the negro "evinces considerable mechanical ingenuity." Both dark and bright are so commingled here that one can scarcely decide which preponderates.

Meanwhile, there is one extremely important factor in the situation, which this study, admirable as it is, quite ignores. Nowhere does one find the faintest suggestion that among the various hindrances to his upward progress against which the negro must struggle may be one, which is all-pervading and fundamental, *viz.* an inherited nature not equal to the task set for it under the conditions presented by the United States to-day. The only difficulties of which we hear are lack of training, hostile race-prejudice, the sudden and rapid industrial changes in the South, and other environmental circumstances. We are familiar enough with the fact that the situations in which individuals find themselves placed from the moment of birth vary widely, and that in the struggle for life many seem to be overborne by adverse circumstances alone — an explanation they themselves and their friends usually offer. Yet stronger natures overcome adverse circumstances and succeed. We are not familiar with the idea of applying this principle to the case of the negro, and asking whether he has to overcome adverse circumstances alone, or, in addition to these, certain inherited characteristics, not advantageous for him under present conditions. Yet this is the vital question, so long as the race is not isolated, but must measure its strength against that of white competition.

Of course environmental forces play a part, indeed a peculiarly important part, in making the negro what he is; and it is unquestionable that many of these forces are sadly against him, yet need not and ought not to be so. To ascertain exactly what they are and to strive for their diminution is certainly our duty. But if we study and plan without recognizing the force of racial heredity, on the off-hand assumption that the negro and the Caucasian are in this respect on an equal vantage ground, then we need not be surprised if time reveals misdirected effort and ill-founded hopes. To secure a really useful knowledge of the negro hereditary endowment and of its divergences from that of the Caucasian is a profoundly difficult undertaking, but surely not a hopeless one. Some beginnings in this direction have already been made, and it is to be hoped that future studies of the negro in this country will devote increasing attention to it.

J. A. TILLINGHAST.

CONVERSE COLLEGE, SPARTANBURG, S. C.

The Negro Church. A Social Study. Made under the direction of Atlanta University by the Atlanta Conference. Edited by W. E. BURGHARDT DU BOIS. Atlanta University Press, 1903. — 212 pp.

In this compilation of forty sections are comprehended short accounts of primitive negro religion and the negro church, a summary statement of missionary work among the negroes in slavery, sketches of noted preachers, church statistics and details regarding the various denominations, studies of local churches, and criticisms of the character of negro preachers and negro religion of the present. The reports and statistics are from various sources; the historical sketches are by the editor. The local studies, by different persons, are of great value and throw much light upon the condition of the negro church at present. Inquiries made by the conference among negro laymen and Southern whites make it clear that a large proportion of the negro ministers are unfit to be moral leaders — debts, women and drink being the chief stumbling blocks. In many localities the lay pillars of the church are of lax morals. Young men in the church are few. Divisions in churches and secessions are frequent, especially in the Baptist church. The statistics are drawn principally from the census of 1890, but in some cases have been brought down to date.

The historical sketches by the editor are interesting but a little one-sided; the census of 1890 has a fuller and more impartial history of each denomination. The conversion of the negroes to Christianity seems of less importance to the editor than the restrictions upon half-savage negro congregations. The sketch of early efforts at conversion is principally a summary of the restrictive colonial legislation designed by the whites to crush the pagan practices of the Africans and to regulate the negro preacher, who was then usually the leader in all race troubles. Negro conversion really became general about the end of the eighteenth century, when "the Rights of Man" were believed in, and after the rigid discipline of slavery had partially crushed out heathenism, thus preparing the negro for conversion to Christianity by the enthusiastic Methodists and Baptists, who were then beginning their marvellous expansion. But Mr. Du Bois does not think that the negro needed to be prepared to receive Christianity. His theories and opinions are interesting, especially since they are the exact opposite of those held by the Southern whites. His thesis is that the negro was better off in Africa than in American slavery and that the blacks cannot remain in the same churches with the whites. He maintains: (1) that the negro church is the sole surviving social institution from Africa, that it was heathen but is now Christian, that the African priest, with

his vast power, survived in the Christian negro preacher; (2) that slavery destroyed the African family and definite and long-formed political, social and religious habits, that the African polygamous family was a powerful institution, greatly superior to the slave family; (3) that the blacks must have churches separate from the whites because the latter do not, and have never, admitted the negro to a proper participation in church government. The historian of slavery will, on the other hand, assert (1) that slavery forcibly destroyed African superstition and voodoo worship and substituted the Christian religion, that the negro church is a borrowed institution; (2) that there was no family life worthy of the name in Africa and that the negro family, such as it is, was forcibly created in slavery; (3) that the blacks in the white churches served a period of necessary probation, being on exactly the same footing that white children were.

In some way, by 1865 there had come to be hundreds of thousands of negro Christians. Most of these were in Southern white churches, whose work receives scant notice. The fact is overlooked that the most fruitful missionary work among the negroes was done by the Southern churches after 1845 when the Methodist and Baptist denominations in the South drew away from the Northern churches. They were then free to work among the slaves without fear of being suspected as abolitionist agents. Of the separation of the negroes from the white churches Mr. DuBois says little except to bear out his theory that the races cannot get along together in the same church. Of the methods employed by religious carpetbaggers from 1865 to 1870 to force all negroes to leave the Southern white churches, he makes no mention. In reality it was equivalent to martyrdom for a negro to remain faithful to his master's church. The persecution of the Colored Methodist Episcopal Church, consisting of the negroes who tried to remain with the whites, but who yet for their safety had to be organized separately, shows the kind of pressure brought to bear by aliens and by blacks under their control in order to draw the race line in the churches.

Mr. Du Bois's theories and opinions may be correct; they are certainly worthy of attention; but they are not well supported by any known facts, nor by the mass of valuable material here collected by himself and his fellow workers. Indeed the effect of the intermingling of facts and theories in this monograph is somewhat confusing and contradictory.

WALTER L. FLEMING.

WEST VIRGINIA UNIVERSITY.

The Return to Protection. By WILLIAM SMART. London, Macmillan and Company, Ltd., 1904. — 284 pp.

Fifty Years of Progress and the New Fiscal Policy. By LORD BRASSEY. London, New York and Bombay, Longmans, Green & Company, 1904. — 111 pp.

Protection in Germany. By W. HARBUTT DAWSON. London, P. S. King & Company, 1904. — 259 pp.

Protection in Canada and Australasia. By C. H. CHOMLEY. London, P. S. King & Son, 1904. — 195 pp.

Protection in the United States. By A. MAURICE LOW. London, P. S. King & Son, 1904. — 167 pp.

Die Eisenbahntarife in ihren Beziehungen zur Handelspolitik. Von DR. ERNST SEIDLER und ALEXANDER FREUD. Leipzig, Dunccker und Humblot, 1904. — 189 pp.

The books called into being by Mr. Chamberlain's proposed change in the fiscal policy of Great Britain already make a respectable library; and there is as yet no sign of a lessening output. Of the works on this subject published in the current year, perhaps the most important, and certainly the most readable, is Professor Smart's *Return to Protection*. It is designed to meet the needs of readers of intelligence and common sense who are not familiar with the technical terms of economics or with even the better known principles of trade and industry. Accordingly the work is practically an elementary treatise on international trade, with special reference to the fiscal problem. As such it has scarcely an equal; and it is to be hoped that it may find a wide circulation in this country as well as in Great Britain.

Professor Smart is uncompromising in his advocacy of free trade as the only satisfactory policy for the United Kingdom of to-day. He emphasizes the fact that for a free-trade country to go over to a protectionistic basis involves no less of painful readjustment than is involved in a change from protection to free trade. But quite apart from the difficulties of readjustment, he is inclined to deny the validity of the familiar arguments for protection. A scientific system of protection involves endless theoretical difficulties. Political exigencies would make impossible the adoption of such a system, if an omniscient theorist should arise to construct it. Retaliatory tariffs he considers more dangerous to the country which employs them than to the coun-

tries against which they are directed. Finally, the author inquires into the alleged decline of Great Britain and demonstrates it to be a myth, and examines the advantages of an imperial customs union, which prove to be insignificant, if not quite illusory.

Lord Brassey's *Fifty Years of Progress* covers much the same ground and takes the same point of view. But while Smart is persuasive, Lord Brassey is dogmatic. Smart's style is lively and entertaining; Brassey's is meagre, disjointed, at times tedious. As an expression of the views of a man of affairs and a scholar, Lord Brassey's little book will be read with interest.

Protection in Germany, Protection in Canada and Australasia, and Protection in the United States are three of a series of popular works upon protection in various countries, published with a view to throwing light upon the British fiscal problem. Mr. Dawson's narrative of the events that led to the inauguration of an imperial protective policy in Germany is very instructive. A policy which began with the wholly reasonable purpose of providing the Empire with independent revenues has gradually and irresistibly degenerated into a mere vulgar protection of selfish interests because these interests happen to hold a strategic position which makes it possible for them to enforce their demands. At present they demand virtually a guarantee of interest on capital and rent of land. In order to preserve the great landowner from ruin, which would often be but the just due of his incompetence, every laborer of the kingdom is compelled to eat dear bread and meat — if not to dispense altogether with the latter. In a comparison of the relative conditions of the British and the German laborers, the author attempts to show how far protection has injured the latter. It is somewhat amusing to find this fallacious comparison of incomparables, which in our own country has done such good service for protection, marshalled among the arguments for free trade.

It may not be amiss to call attention to a few errors that escaped the author's revision. On page 4 he speaks as though discrimination in favor of importation of raw materials were an innovation upon mercantilistic policy. On page 19 he represents the Customs Union, consisting of eighteen states, among them Prussia, as comprising an area of only 7,719 square miles. The statement on page 97 that cost of living has increased does not seem to be in harmony with the description in the same chapter of a universal fall in prices. On page 150 it is stated that the cotton spinners wanted low duties on yarn while the weavers wanted high duties — an example of altruism, if the statement is correct, without parallel in the annals of protection.

Mr. Chomley's brief study of protection in Canada will be of interest to both American and English readers, since influential political parties in each country seek to enter upon closer commercial relations with Canada. In spite of his free-trade bias, Mr. Chomley admits that Canada is now committed to the policy of protection to infant industries, and will hardly be induced to enter upon policies of preferential treatment or reciprocity which would reduce substantially the duties on manufactures. In his discussion of protection in Australasia Mr. Chomley comes to similar conclusions. Australasia does not choose to let England do her manufacturing. Whether the protective policy of the Australasian colonies has been to their advantage or not it would be impossible to say. The author questions the advantages of protection in these colonies, and ascribes the continuance of the policy, in some of them at least, to the accidental fact that the advocates of free trade have been largely conservatives and hence have failed to secure the support of the powerful laboring class.

Mr. Low's *Protection in the United States* consists of a brief historical sketch of the evolution of the American system, and a somewhat elaborate statement of the theoretical basis of protection, as the author views it. The first part may be dismissed with a few words. Students of protection are gradually coming to doubt the possibility of any historical proof of the expediency or in expediency of a protective system. In American economic history, at any rate, so many powerful influences have been operating simultaneously that to isolate one and measure its effect is impossible. Of this Mr. Low is aware, yet he continually implies that depression or prosperity in a given period is directly traceable to fiscal policy — except when prosperity attended the low tariff of 1842. For this prosperity Mr. Low seeks other causes, since he is an avowed protectionist.

There is need for a clear and simple restatement of the case for protection; but one who seeks to find it in Mr. Low's book will be disappointed. The author has collected all the arguments he can find for protection, whether in Republican campaign literature or in the works of List or Patten, and he adopts them all uncritically. Accordingly it is not surprising that some of his arguments are incompatible with others. Thus, for example, he holds that permanent protection alone can enable the American manufacturer to meet the cost of high wages; yet he lays down the "axiom" that high wages always represent low labor-cost — that American labor at \$1.50 a day is cheaper than Indian labor at 12½ cents. He admits that the tariff raises prices, yet he apparently believes that the foreigner "pays the tax." He is,

moreover, extremely infelicitous in his choice of statistical proofs. Thus on page 60, in order to create a presumption that the tariff raises wages, he gives a table comparing wages in England and the United States in fifteen trades. Without exception, the trades are such as gain nothing whatever from the tariff, *e.g.*, carpenters, upholsterers, compositors. On page 85 he attempts by a comparison of maximum prices in New York and London to disprove the assertion that prices are raised by the duty. If the commodities had been correctly selected, *i.e.*, if they had been commodities which are normally imported into the United States, any statistician would nevertheless reject at once deductions based upon maximum, not average prices. But the commodities selected are flour, bacon, hams, butter, beef and eggs, all of which we export — indeed in four of the cases, the London prices are for American products. And this is his sole proof that the tariff does not raise prices! Clearly nothing more is needed to show that the author is not equal to the task he has undertaken.

The little work on *Die Eisenbahntarife*, will serve to bring home to us the truth that American protectionists are raw apprentices in the art of customs exactions, as compared with the protectionists of the continent of Europe. The two cardinal points of a properly developed commercial policy are the exclusion of the foreigner from one's own market and the intrusion of one's goods into the foreigner's market. The first is easy; the second requires genius; and in it our science is *nil*. So skilful have the continental diplomatists become in getting the better of each other by the ordinary methods of customs wars that further gain to any nation requires the development of a new arm; and this our author finds in the manipulation of freight rates. If the importer succeeds in scaling the customs wall, we should clap such high rates upon his goods that he will be unable to carry them far from the frontier. We should reduce export charges, until national produce can compete even in protected foreign markets. If another nation uses our railways to reach a neutral market, we should discriminate against its goods. Canadian goods bonded through to England should be burdened as heavily as possible, since thereby we would check the development of a competitor. True, our railways would lose freight, but "we have passed beyond the naïve view-point which regards private interests as paramount."

So much for the ideal. The author is grieved to confess that as yet railway policy is in the main tainted by free-trade principles. True, most continental states give reduced rates on the national roads to export products. Many of them, notably Italy and Hungary, through

reduction of rates for special towns in which foreign goods are not normally reloaded, and the maintenance of high general rates to which all goods of foreign origin are subjected, manage to grant a measure of surreptitious protection to the domestic producer. Low rates are charged from the center toward the frontier, high rates in the reverse direction. Low rates are sometimes granted to goods brought to specific stations by wagon road or private track. To enjoy these rates, through freight would have to be unloaded, hauled into the country and back again to the station. Clearly, here is a vast field for the exercise of ingenuity. Our author confidently promises such developments for the future. And this suggests, perhaps, a new possibility which should be considered by those who advocate nationalization of railways as a cure for the evil of discriminations. How long would it be before our national railroads would be captured by the protectionists? In such an event, it is easy to foresee an endless array of vexatious discriminations, successfully defended on the ground of patriotism.

ALVIN S. JOHNSON.

Methods of Industrial Peace. By NICHOLAS P. GILMAN. Boston, Houghton, Mifflin & Co., 1904. — 436 pp.

In view of the work which the National Civic Federation is attempting to do, and is doing, in promoting industrial peace, and of the aroused public interest in this subject since the anthracite coal strike of 1902, Mr. Gilman's latest book is an exceedingly timely one. It is not only timely, it is of permanent value as a contribution both to economic science and social policy. Those who are familiar with his earlier books on *Profit Sharing* and *A Dividend to Labor* will find in this work the same careful thoroughness, impartiality of statement and sanity of view which characterized them, — and something too of the same optimism. Mr. Gilman holds a brief for neither labor nor capital, but rather for the oft-forgotten third party in all labor controversies — the public. The purpose of his book is not so much to describe the conditions of peaceful industry as the methods whereby an interruption of these conditions may be prevented.

"Peace," says Mr. Gilman, "reigns in industry when the two parties are for the time fairly well satisfied with the *status quo*." A single chapter is devoted to a description of the industrial position of the two parties and to the associative character of modern industry. Two chapters describe the combinations of employees and employers, while the next thirteen present the various methods of securing or maintain-

ing industrial peace. The *sine qua non* is collective bargaining, but that alone is not enough; a collective bargain pure and simple should be supplemented by provisions in the agreement that all disputes regarding the interpretation of the agreement shall be referred to an arbitrator for final decision.

But even this offers no absolute guarantee of industrial peace. A more vital question at present is that of the best means to employ for holding both parties to strict obedience to the joint agreements which they have made. This Mr. Gilman believes is to be found in the legal incorporation of trade-unions. The present unwillingness of unions to become incorporated he criticises as "illogical and immoral." Such a criticism, however, will not be accepted by all students of the labor problem. In the first place it assumes too easily all lack of hostility toward unions on the part of employers. While it is true, too, that the Taff Vale decision in England, which is given at length, has probably not diminished the real strength of the unions there, it is certain that the union movement has not the same solidity or power in this country as in England. Moreover the evidence on this point before the Industrial Commission made it quite clear that the unions were acting on the advice of their attorneys in refusing to be incorporated. Nor would incorporation alone solve the problem of industrial peace.

Mr. Gilman, however, is ready to go much further than this. "The time is ripe," he says, "for emphatic assertion of the rights of the public. If the employer and the trade-union will not settle labor difficulties speedily and peaceably, then the public must and will find a more effectual way." Conciliation and arbitration are warmly advocated, but failing these the author leans strongly to the use of the New Zealand system of legal regulation, improperly known as "compulsory arbitration."

There is something of the missionary spirit in all that Mr. Gilman writes, and the hope is expressed in the preface of the present volume that it may "assist the practice of those who have the task laid upon them of settling labor disputes." But this very fact gives it a warm, generous quality, without detracting in the slightest from its scientific character. It is careful, calm and unbiased, and is unquestionably the best book on the subject with which it deals.

E. L. BOGART.

OBERLIN COLLEGE.

Special Report of the General Assembly (of Vermont), 1902, relating to Taxation of Corporations and Individuals. By the Commissioner of State Taxes. Burlington, 1902. — 134 pp.

Preliminary and Final Report of the West Virginia State Taxation Commission, 1902. Charleston. — 78 pp.

Report of the Tax Commission of Minnesota created by Chapter 13, General Laws of 1901, for the purpose of Framing a Tax Code. St. Paul, 1902. — 223 pp.

Report of the State Tax Commission of Missouri, 1903. Jefferson City. — 35 pp.

Second Report of the Board of State Tax Commissioners of Michigan. Lansing, 1903. — 312 pp.

Second Biennial Report of the Wisconsin State Tax Commission, Madison, 1903. — 377 pp.

The two years that have elapsed since the last review in the *POLITICAL SCIENCE QUARTERLY*, Volume xvii, page 177, have seen no falling off in the interest devoted to the problems of practical tax reform. Among the more prominent state reports, the six following deserve some mention.

The Vermont report confines its attention to the discussion of corporations and the grand list. The volume contains a concise history of the tax on each kind of corporation, with detailed statistics as to the present situation and recommendations as to desirable changes. Among such changes are the introduction of a progressive rate into the earnings tax on railways, the inclusion of gas, electric lighting and power companies under the taxable corporations, and minor suggestions with reference to banks and insurance companies. In the main, however, the commission finds the Vermont laws on this subject fairly adequate. On the other hand, the grand list is declared to be in a very unsatisfactory condition. It is made up from the sworn statement of the taxpayer touching his personal estate as well as from the quadrennial appraisal of real estate. The commission tells us that it is a well known fact that the grand list does not represent by any means the true cash value of either the real or the personal property. This statement is followed by the usual anticlimax of the recommendation of a board

of equalization as a remedy. It is evident from the report that the economic conditions in Vermont are not yet those of a developed industrial state, for the commission would otherwise not set forth as a panacea what has been found to be so inadequate in other commonwealths.

The West Virginia report is a far more comprehensive and thoroughgoing piece of work. The preliminary report was discussed in the *POLITICAL SCIENCE QUARTERLY*, volume xvii, page 177, to which the reader may be referred. The final report presents the conclusions as formed after an interval of further discussion and deliberation. Here, as in the original report, the influence of the Buffalo Tax Conference is plainly visible. The commission still maintains that by all means the best plan is to abandon the attempt to assess intangible personal property. It confesses, however, that under the West Virginia constitution as it stands, this plan is impracticable. While waiting for such an amendment, the commission recommends that at all events the system of deduction for debts be extended to intangible personalty. Moreover, mortgages should also be freed from taxation. The recommendation of the separation of state and local sources of revenue is repeated and strengthened, and it is suggested that the state revenue be derived from increased corporation taxes as well as from licenses to dealers in liquors, tobacco and coal.

The Minnesota commission repeats the familiar facts with reference to the taxation of personalty. After speaking of real estate, they add: "passing to the assessment of personal property, we enter a field of confusion worse confounded." They tell us that the existing facts form a "deplorable condition of affairs." Their recommendation is the customary proposal of the listing system, to be verified by law. That the commission, however, is only half-hearted in its recommendation is seen by the following significant conclusion:

It may here be said that if it shall be proven by experience under the bill that the enforcement of its provisions is inadequate to produce results far more satisfactory than any the state has ever yet known, the sooner the taxation of many classes of personal property is abandoned, the better.

As to which alternative is to be the one ultimately chosen there is perhaps not much doubt. The taxation of corporations on the other hand in Minnesota seems to be in fairly satisfactory condition. At all events, the commission makes no startlingly new recommendations. As regards other points the report recommends the separation of state and

local revenues and has something to say about an inheritance tax. The one striking proposal in the report is the suggestion of an income tax — striking because the present reviewer is quoted at some length in a passage which is misinterpreted into affording a basis for the scheme of the commission.

Missouri has also gotten into line, but the report of the commission is a modest one. No one, it tells us, who has given any thought to the complex principles of taxation, will expect a discussion here of the various theories advanced. The commission states that the revenue laws of Missouri in their main provisions compare favorably with those of other states. It thereupon proceeds to explain the shortcomings of the Missouri system. The defects of the general property tax it thinks may be corrected by requiring the assessor to put into separate columns the actual and the taxable values. If, however, this does not accomplish the results anticipated, "it certainly can be no worse in practice than the system now in vogue." The present system is so bad, we are told, that any attempt to present statistics on the subject would be useless. Missouri, also, it is clear, has not quite reached the point where it is ready to face the real difficulties of the problem.

At the time that the permanent tax commissions of Michigan and Wisconsin were instituted, attention was called to the significance of the action. The second biennial reports have now been published and are quite up to the level of the first.

The Michigan report gives a general review of the activity of the commission, and then devotes its discussions chiefly to two topics. The first is the Ward-Lowrey or mortgage tax bill. This was an attempt to introduce the Massachusetts and California system but was vetoed by the governor. The special reasons for this action, which really do not go to the heart of the subject, are well set forth in the report. The other discussion is that pertaining to the taxation of railways, under the Cooley and Adams system, which is now familiar to all students, and which is being at present so actively contested in the courts. The volume contains many statistical tables, and will be of interest to those who wish to keep abreast of the latest developments.

The Wisconsin report is divided into a number of carefully elaborated chapters including such subjects as the inheritance tax, the taxation of credits in general, and the assessment of railways and banks. Some of these discussions go quite fully into the theory of the subject, and are provided with copious references to the court decisions, so that they will be found of permanent value. The report is also noteworthy in that it contains for the first time in any American state document chap-

ters on the state budget and on municipal taxation, including the whole subject of municipal accounting.

It would be a great gain to the cause of tax reform in the United States if more states were to follow the examples of Michigan and Wisconsin in forming permanent tax commissions. Their discussions are far and away superior to those published by temporary bodies, composed of men who commonly approach the subject for the first time.

EDWIN R. A. SELIGMAN.

Der Lübecker Schoss bis zur Reformationszeit. VON DR. J. HARTWIG. *Staats- und socialwissenschaftlichen Forschungen.* Band xxi, Heft 6. Herausgegeben von Gustav Schmoller. Leipzig: Duncker & Humblot, 1903.—8vo, xiv, 237 pp.

This study constitutes the one-hundredth number in Schmoller's *Staats- und socialwissenschaftlichen Forschungen* and is on that account honored with a charming little preface by Professor Schmoller himself, in which he recounts the history of this long series of publications. Writing on Palm Sunday, April 5, 1903, Professor Schmoller reviews the growth of this one of the several great monuments of his own life work. He tells how on August 30, 1876, he and G. F. Knapp made a contract with Duncker and Humblot for the publication of this series, the purpose of which was to facilitate the publication of the scientific studies made by their own pupils. The first five numbers were not published, however, until two years later, in 1878, and now, after five and twenty years, the one-hundredth number has come from the press. Before the first number appeared, Knapp had been called to Strassburg and his name was dropped as co-editor, the series appearing, as it has ever since, under Schmoller's name alone. Of the one hundred publications, all but twenty-seven, he tells us, are the work of his own pupils. Few of the studies in this series are devoted to questions of the day because of his feeling that beginners are not competent to handle such subjects. Fewer still are devoted to questions of economic theory, not for the reason which Schmoller's opponents might attribute to him, namely, that he does not value that line of work, but rather because, as he puts it, he holds it too high. Beginners' impressions and speculations in the field of economic theory appear to him, he says, "for the most part unripe, not new or significant enough to be taken up in such a series." In consequence, most of the studies are strictly in keeping with the original character of the work of the historical school of economists. Thirty-three numbers are the work of men who are now or have been professors or

teachers of political science or history, and many of these were their first works. Some of these men are now occupying conspicuous positions in the world of scholarship. Many have already died. One of them closed his life as a cabinet minister, many are in the official service of the empire, and the great majority of them are in other conspicuous positions.

Schmoller's own share in the work has been large, for in many cases he has set the author his theme and followed through the entire development of the work, even at the end going so far as to create "wounds which healed but slowly" by ruthlessly cutting out from the finished work what the budding authors considered their "pearls." Nevertheless he reports that he finds himself still bound by ties of friendship and common interest to most of them. With this number of the studies, Schmoller turns over the further conduct of the series to Professor Max Sering, Number 101 being promised under the names of Schmoller and Sering.

Dr. Hartwig's study of the ancient city tax of Lübeck is, like many of the preceding studies in Schmoller's *Forschungen*, a careful piece of historical investigation. He found rich sources in the ancient records of the city and has brought together a large amount of material in the official publications and from other sources. Established in the twelfth century, this ancient city tax shows an unbroken development of over six hundred years. It therefore affords the material for a study thoroughly typical of the historical school.

The fact that the tax came to be spoken of as *the* Lübeck tax emphasizes the unity of its development. It had, indeed, an almost typical growth, beginning like all direct taxes as an irregular, more or less voluntary contribution under the name of "*collecta*" (*Bede*), made only upon extraordinary occasions. In its original form it was a purely personal tax bound up with the rights, privileges and duties of the citizen. The original obligations resting upon the Lübecker citizen were "*schoten, waken, wepenere utmaken*," that is, to pay scot, to keep watch and to bear arms. Among these, the chief obligation was the scot and this became by degrees the distinctive mark of the Lübecker burgher. In the beginning it was a tax upon the possessors of land or houses within the domain of the city. Persons not householders or landholders seem to have been exempt. It was, in short, a tax upon those who, like the landholding merchants, enjoyed a monopoly of burgher rights. Whoever did not possess an unincumbered property in land or house did not, as such, possess any rights in the city; he stood outside of its franchises and, in consequence was free of taxation.

One of the interesting idiosyncrasies of the development was the introduction of other than physical persons as taxpayers, the property-holding guilds being subject to the tax. In the beginning landed property was the sole basis for the apportionment but, as the practice of renting city lands and houses grew up, this afforded a new basis upon which the tax might be apportioned, and personal or movable property soon came to be included.

CARL C. PLEHN.

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Bank Rate and the Money Market in England, France, Germany, Holland and Belgium, 1844-1900. By R. H. INGLIS PALGRAVE, F.R.S.
New York, E. P. Dutton & Company, 1903. — xxiii, 237 pp.

Too much can hardly be said in praise of the studies of Mr. R. H. Inglis Palgrave with respect to the bank rate and the money market; covering the long period of sixty-six years, 1844-1900. The basis for the study has been the actual statistics, week by week, which the author has worked out in the form of yearly averages, but on account of "the doubt that this [presentation] would have been too cumbersome for the general reader" the results have been presented in ten-year averages. That the tables would have been cumbersome is probable, but the value of such tables, presented in concise form, furnishing the actual data week by week and better, day by day, have in themselves a value that compensates so trifling a disadvantage. It is a fact often lost sight of by investigators that as time passes methods of analysis, once accepted, are discarded, and results founded on inferences may be reasoned otherwise, but the actual data have forever the value of the truth for which they stand. Could Mr. Palgrave be persuaded to publish this raw statistical material it would form a supplementary volume of the greatest value.

The large deposits of "bankers' balances" in the Bank of England and the working of the "one reserve system" furnishes an interesting parallel to the deposits of the "out-of-town banks" and trust companies with the associated banks at New York. Despite the apparent solidity of a ratio of reserves to liability of forty-three per cent for such a year as 1875, after deducting the bankers' balances, *i.e.* redeposits by other banks, the ratio falls to six per cent and in 1866 to three per cent. Critics of American banking methods can hardly find a favorable vantage ground of comparison in the statistics of the Bank of England. Mr. Palgrave urges greater publicity with respect to the element of bankers' balances, and very justly, inasmuch as since 1877

no figures of the amounts of bankers' balances have been given out, although the amount of these deposits are known to have greatly increased. The deductions of the author from his investigations are to the end that security should be increased. At the same time, the author shows that the bankers' balances do not constitute an element of weakness in times of panic as do the redeposits of surplus currency by the out-of-town banks at New York.

For students interested in data bearing on interest, the book will be a mine of information, although the same drawback is experienced that has been previously mentioned in the case of bank statistics. It is impossible to get at the raw material, because the tables destroy the element of sequence and the average method destroys the element of fluctuation. It is not satisfying to be told that in 1857 the interest rate for the Bank of France stood at 5 per cent for 2 days, 6 per cent 188 days, 7 per cent 12 days, 8 per cent 9 days and 9 per cent 16 days. It is the location of these days in the year and the order and violence of the fluctuation which are the essential facts, either in continuous statistical comparison or in problems of variation and correlation. This defect in Mr. Palgrave's otherwise splendid study in finance is here over-emphasized in the hope that investigators will in the future furnish their material "as it is and as it occurs," raw and uninteresting as it may seem; for where the material is withheld, it is impossible to verify the conclusions. In addition, the records may become the beginning of new investigations and scientific labor may become cumulative in place of being endlessly renewed.

J. PEASE NORTON.

YALE UNIVERSITY.

RECORD OF POLITICAL EVENTS.

[From May 1, 1904, to November 8, 1904.]

I. INTERNATIONAL RELATIONS.

THE RUSSO-JAPANESE WAR: MILITARY OPERATIONS

— Soon after the defeat of the Russians on the Yalu, May 1, by the first Japanese army under General Kuroki (see last RECORD, p. 333), two other Japanese armies were dispatched to Manchuria. The second army, commanded by General Oku, landed on the Liaotung peninsula at a point north of Port Arthur, and defeated the Russians, first at Kinchau, and later in a sanguinary battle lasting five days at Nanshan hill, a part of the outer line of defenses of Port Arthur. This army then turned northward, driving the Russians before it and defeating them with heavy loss in the battle of Vafangow and capturing Kaiping in July. The third Japanese army, commanded by General Nodzu, landed at Takushan on the Korean gulf, defeated the Russians after a seven hours' battle at Sinyen on June 10 and continued its march northwest toward Liaoyang, where a Russian army estimated at 125,000 or 150,000 men was stationed. — On May 30 the Russians evacuated Dalny, after destroying its extensive docks, piers, warehouses and barracks. In the latter part of June the Japanese under command of General Nogi began the regular **siege of Port Arthur**. The Russian fleet within the harbor was bottled up not so much by the sinking of a number of stone-laden vessels in the outer harbor (an operation by which the channel was only partially obstructed) as by the Japanese blockade outside. During the month of July the Japanese lines were drawn closer about the city, several outposts being captured. From time to time, beginning in the latter part of July, the Japanese fleet bombarded the city, and desperate assaults were made from the land side, all of which were repulsed by the Russians, commanded by General Stoessel. — On August 10 the Russian fleet consisting of twenty-four vessels made a desperate but unsuccessful attempt to escape from the harbor of Port Arthur and join the Vladivostock squadron. Admiral Wittsoeft and a large part of the crew of his flagship were killed and several of the Russian vessels were seriously injured. The "Czarevitch" escaped to the neutral harbor of Tsinchau where it was dismantled and laid up for the rest of the war. The "Askold" and the "Groszovoi" reached Shanghai only to be similarly treated. The "Novik" took refuge in the harbor of Saghalien but was forced to leave and was destroyed by two Japanese cruisers. The "Ryeshitelni," having reached the harbor of Chifu was towed out by Japanese cruisers (see below, INTERNATIONAL INCIDENTS). The remaining vessels of the fleet returned badly damaged to Port Arthur. — Shortly after the disaster to the Port Arthur fleet the **Vladivostock squadron** was attacked by ad-

miral Kamimura in the strait of Korea off Tsu Island. The "Rurik" was sunk and the other vessels of the squadron were disabled. In addition to the cases here noted, other Russian vessels were crippled or laid up in neutral harbors, and Russia's naval force in the East was reduced to insignificance. — A formal demand was made early in August for the surrender of Port Arthur, but the terms offered were promptly rejected. At the close of the period under review the beleaguered force, largely diminished in numbers and living on reduced rations, was still holding out against the attacks of the Japanese. — Meantime the Japanese advance into Manchuria, although obstinately contested, proceeded with uniform success. On July 20 Field Marshal Oyama assumed command of all the Japanese armies in the field, and under his direction the divisions of Kuroki, Oku and Nodzu moved along converging lines toward the important town of Liaoyang which the Russians had strongly fortified. In this advance movement the Russians were defeated successively at Motien Pass, Kiaotung, at Tatchekiao, at Yangste Pass (where on July 29 one of their generals, Count Keller, was killed), at Simancheng, at Huicheng and at Anshanshan. Before the Japanese advance the Russians retreated northward to the environs of Liaoyang where their forces under General Kuropatkin were concentrated in the form of a semi-circle south of the town. Upon this line the three Japanese armies converged and during the first week in September a series of battles were fought which, in view of the numbers engaged (the aggregate forces were variously estimated at from 400,000 to 500,000 men), are ranked among the greatest battles of modern times. The Russians were defeated with enormous losses and retreated across the Taitse river, and later toward Mukden, about sixty miles north of Liaoyang. — Kuropatkin's retreat was conducted with skill and General Kuroki's efforts to turn the Russian left flank were unsuccessful. — On October 2, General Kuropatkin gave orders for a forward movement, and on October 11 the Russian advance met the Japanese near Yentai, about twenty-five miles north of Liaoyang. A series of sanguinary battles occurred during the week following. The right and left wings of the Japanese army were commanded by Generals Kuroki and Oku respectively, while General Nodzu held the center. General Kuropatkin's forces were driven back with losses admittedly in excess of 35,000. According to Field Marshal Oyama's report, over 13,000 Russians were left dead upon the field. The Japanese losses, according to the same report were less than 15,000. — About the middle of October, the Russian Baltic fleet started on its long planned but repeatedly postponed voyage to the East. (See INTERNATIONAL INCIDENTS, below.)

RUSSO-JAPANESE WAR: INTERNATIONAL INCIDENTS. — Russia's disregard of the rights of neutrals on the high seas led to remonstrances on the part of Great Britain and the United States and provoked general criticism of Russian policy. Soon after the outbreak of

hostilities the Russian government announced that it would treat all kinds of fuel, such as coal, naphtha and alcohol, as contraband, and later it added cotton to the list. On June 10, Mr. Hay, Secretary of State of the United States, sent a circular to the American ambassadors in Europe, dissenting from the Russian position that these articles might be treated as absolute contraband. The Russian order also classed as contraband "everything intended for warfare on land or sea," including foodstuffs. The language was ambiguous, but the intent became clear when the Russian government communicated to the American ambassador at St. Petersburg a decision of the prize court at Vladivostock, in the case of some American flour that was seized on the German steamship "Arabia," that the flour was contraband because it was bound to Japanese ports and addressed to commercial houses there. Against this decision, which was apparently approved by the Russian government and by which an attempt was made to throw foodstuffs into the category of absolute contraband by requiring the owner to make impossible proof that no part of the cargo might eventually come to the hands of the enemy's forces, both the United States and Great Britain strongly remonstrated. Writing on August 30 to the American ambassador at St. Petersburg, Mr. Hay declared that the Russian contention, if fully carried out, would mean "the complete destruction of all neutral commerce with the non-combatant population of Japan." The remonstrances of the British and American governments were referred by the Czar to a commission representing various ministries at St. Petersburg, and toward the end of September it was announced that the Russian government had decided to place foodstuffs in the list of conditional contraband, but that it still adhered to its original position with regard to coal. At the same time the Russian government formally remonstrated against the course of the British government in permitting wholesale trade in contraband between England and Japan. Serious protests were, on the other hand, called forth by seizures of British and German merchant ships by the Russian auxiliary cruisers "Smolensk" and "St. Petersburg," belonging to the Russian volunteer fleet. These cruisers, disguised as merchantmen, sailed through the Dardanelles from the Black Sea early in July and at once began to search and detain neutral vessels. The German steamship "Prinz Heinrich," with the imperial mails, was stopped on July 13, and on July 16 the British steamship "Malacca," laden with government supplies, including arms and ammunition for the British arsenal at Hongkong, was captured. The mails taken from the "Prinz Heinrich" were after a brief detention restored. The "Malacca" was sent through the Suez Canal, in charge of a prize crew, for a port on the Baltic. The British government protested against the seizure, and public indignation reached a high pitch. The Russian government sought to justify the capture by alleging the suspicious character of the cargo and the refusal of the captain of the "Malacca" to show his manifest; but the British government insisted that the

government stamp with which the cargo was marked sufficiently established its innocent character. The British government also maintained that the auxiliary cruisers in question, since they passed the Dardanelles as merchant vessels and could not without a violation of the treaty of Paris have passed as men-of-war, were not entitled to exercise the belligerent right of visit and search at sea. The Russian government released the "Malacca" and gave an assurance against the recurrence of similar incidents. The "Smolensk" seized also the British ship "Ardoval," which had on board a quantity of supplies shipped by the American War Department to Manila, but the prompt release of the vessel rendered any action by the United States unnecessary. The sinking on July 25, by the Vladivostock squadron, of the "Knight Commander," a British merchantman laden with a miscellaneous cargo for Chinese and Japanese ports, gave rise to further animated controversy. The Russian government alleged that a part of the cargo consisted of bridge and railway materials for the use of the Japanese army, and excused the sinking of the vessel on the ground that it was deemed extremely difficult to take her into port for adjudication. The prize court at Vladivostock, on submission of the steamer's papers, promptly adjudged her lawful prize. The British government, however, strongly protested against the claim of the right to destroy neutral ships in advance of the decision of a prize court, and the act of the Russian commander was vigorously denounced in Parliament. The Russian government eventually acceded to the British demand for reparation. A more serious controversy was raised by the performances of the Russian Baltic squadron at the beginning of its Eastward voyage. Alarmed by rumors that Japanese agents had been surreptitiously preparing to attack this squadron in the North Sea with torpedoes or floating mines, the Russian officers apparently adopted the policy of opening fire upon any vessel which appeared to them suspicious. In passing through the Skagerack a Russian cruiser fired upon a Swedish steamer and on October 21 a German fishing vessel was similarly attacked. During the following night the Russian squadron encountered a fleet of British fishing steamers, sank one of them and riddled others, killing two men. According to the report of the Russian Admiral Rojestvensky, transmitted October 27 from Vigo, Spain, his squadron was attacked, while passing through the fishing fleet, by two torpedo boats, one of which it sank, and the injury to the British fishing steamers was a regrettable but inevitable incident of which the Russian officers were unaware. This explanation was received in Great Britain with general incredulity. In the meantime the Russian government expressed its profound regret and promised liberal compensation, but refused to give any pledge that the officers responsible for the occurrence should be punished. British feeling, already aroused by Russian interference with neutral commerce, ran high; satisfaction and assurances against future outrages were generally demanded; active naval preparations were made, and war was appre-

hended. On October 28, however, it was agreed that the Russian vessels concerned in the incident should be detained at Vigo until the Russian naval authorities should ascertain what officers were responsible; that such officers and other material witnesses should not proceed on the voyage to the East; and that an inquiry into the facts should be instituted by an international commission, as provided by the Hague Convention. At the same time the Russian government undertook to guard against a recurrence of such incidents. — Much adverse criticism was called forth in neutral countries by the action of Russia in announcing an intention to treat as spies all persons engaged in using wireless telegraphy for the purpose of sending information as to military events from within the field of military operations. No formal protests appear to have been made by neutral governments, although the Russian ambassador at Washington was informed that the United States reserved the right to watch over the persons and property of its citizens and that any interference with their rights would be a subject for inquiry. Much discussion also took place in the press as to certain floating mines found at sea off the Manchurian coast, but the origin of the mines was not definitely established. — Much apprehension has at times been excited by the apparent disposition of both belligerents to disregard the neutrality of the Chinese empire. Apart from the fact that the war itself is carried on chiefly on Chinese territory, precisely as if that territory were the subject-matter of the conflict, Chinese neutrality has not in other respects been scrupulously respected. On August 10, a Japanese vessel-of-war entered the harbor of Chifu and captured and carried away the Russian destroyer "Ryeshitelni" which had taken refuge there and which, as the Russians alleged, had assented to a Chinese demand for disarmament. The Russian government formally protested to the powers against the action of the Japanese as a flagrant violation of international law. The Japanese defended their action on the ground of Russia's alleged violation of China's neutrality and China's inability to enforce it. Other Russian war vessels seeking refuge in Chinese ports were (as noted above) dismantled; and the same course was pursued in regard to Russian war vessels in the German port of Kiaochau. On September 14 the Russian auxiliary cruiser "Lena," of the Vladivostock squadron, put in at San Francisco. An examination by officers of the United States having demonstrated that she was unable to leave without obtaining practically a new outfit of machinery, the President ordered her to be disarmed and exacted from her commander a guarantee that no attempt would be made to take her out of port before the conclusion of peace. — Charges and counter-charges have been made by both belligerents of the violation of Red Cross signals.

JAPAN AND KOREA. — The protocol signed in February, 1904 (see last RECORD, p. 332), was followed by the conclusion of a treaty on August 22, by which it is provided that the Korean government shall engage as

its financial adviser a Japanese subject recommended by the Japanese government, and shall take action on financial matters only after his counsel has been given; that it shall engage as a diplomatic adviser a foreigner recommended by the Japanese government, and shall take action only after his advice has been given; and that the Korean government shall previously consult the government of Japan in concluding treaties and conventions with foreign powers and in dealing with other important diplomatic affairs. In accordance with this agreement, Durham White Stevens, an American, was appointed diplomatic adviser to the Korean government. In accordance with the protocol of February 23 the Japanese government demanded the introduction of extensive reforms in the government of Korea, the most important of which are the enforcement of the principle of ministerial responsibility and the reorganization of the national finances. To aid in the rehabilitation of the finances Japan agreed to lend the Korean government 3,000,000 yen. The Japanese government undertook also to represent Korean interests in foreign lands, and Korean diplomatic and consular representatives abroad were withdrawn. One of the first results of Japanese control over Korean foreign relations was a decree issued in May by the Korean government revoking the timber concessions on the Yalu and Tumen rivers granted to Russia in 1896.

THIBET. — In September the British "mission" to Thibet (see last RECORD, p. 333) was carried to a successful completion with no outside interference except a diplomatic protest from Russia. After leaving Geru (see last RECORD, p. 334) the British force advanced to Gyantse where it was bombarded by the Thibetans. On July 6 Gyantse was taken by storm after severe fighting. From thence the expedition proceeded to Kharola Pass, where two battles were fought and the Thibetans routed. In the meantime Colonel Younghusband had sent a letter to the Thibetan authorities demanding that they send representatives to Gyantse for the purpose of treating. The letter being returned unopened the expedition resumed its march toward Lhasa and entered that city August 7, after eight months of marching and fighting. On September 7 Colonel Younghusband signed a treaty with the representatives of the Dalai Lama who had himself fled from Lhasa. The treaty provides for a rectification of the boundary between India and Thibet; requires the Thibetans to establish three marts for mutual trading and to pay an indemnity of £500,000; prohibits the erection of customs stations on the frontier and the collection of customs on British exports to Thibet; requires the demolition of all forts on the frontier between Gyantse and the Indian frontier; provides for the temporary occupation of the Chumbi valley by British troops, and stipulates that without the consent of Great Britain no Thibetan territory shall be sold, leased or mortgaged to any foreign power, and that no foreign power shall be permitted to concern itself with the administration of the government of Thibet nor to send

official or non-official persons to Thibet to assist in the conduct of Thibetan affairs nor to construct roads or telegraphs or open mines in Thibet. Against this treaty the Russian government made protest, claiming that the action of Great Britain was a violation of specific assurances given to Russia with regard to the British designs in Thibet.

INTERNATIONAL RELATIONS IN AFRICA. — The provisions of the British-French colonial agreement (see last RECORD, p. 334) referring to **Egypt** have received the formal approval of Germany, Austria, Italy and Russia, which powers have undertaken not to insist upon a time limit upon British occupation in Egypt. In return for the free hand thus given to her in Egypt, Great Britain has given the above mentioned states assurances of most-favored-nation treatment for thirty years, and has promised to respect their treaty rights in Egypt and to grant certain liberties therein with regard to schools and resident officials. The **Moroccan** clauses of the British-French agreement caused some dissatisfaction on the part of the Spanish government whose interests in Morocco are considerable. This tension was removed in September by the conclusion of a treaty between France and Spain whereby Spain, in return for various concessions, withdraws her objection to the British-French disposition of the Moroccan question and recognizes the integrity of the Moorish kingdom subject to the paramount influence of France. The agreement, it is believed, goes far toward insuring the realization of the French ambition of a West African empire extending from the French Soudan to the Mediterranean and Atlantic. — The well nigh anarchical conditions prevailing in Morocco as well as the impotence of the sultan were strikingly revealed by the **Perdicaris incident** in May. Perdicaris, an American citizen living near Tangier, together with his step son, Cromwell Varley, a British subject, was kidnapped by a brigand named Raisuli and held for ransom. Raisuli as a condition of release demanded that \$70,000 be paid him, that the governorship of various tribes be conferred upon him, that the governor of Tangier be deposed, that the Moorish troops at Tangier be withdrawn, that certain of his followers be released from prison and that immunity be guaranteed to himself and his followers for various offenses committed in the past. The government of the United States, as a means of impressing the sultan with its determination to protect American rights, assembled a formidable fleet of war vessels in Moroccan waters. On account of the dominance of French influence in Morocco the United States requested the coöperation of the French government which was readily given. At the same time the consul-general at Tangier was informed by the American government that it would hold Raisuli personally responsible for the safety of Perdicaris and that it would take no action that would amount to a recognition of the right of brigandage or blackmail in Morocco. The sultan acceded to the demands of Raisuli and Perdicaris was released.

EUROPEAN INTERNATIONAL RELATIONS. — In the latter

part of April the President of France accompanied by the minister of foreign affairs and a distinguished party of French officials visited Rome. The reception of the French party at the Quirinal was most cordial and served to strengthen more firmly the recent Franco-Italian *entente* (see RECORD of December, 1903, p. 735). The visit gave great offense to the Pope who addressed a note of protest to the various Catholic powers. The protest was strongly denounced in both the French and Italian chambers. Other visits of courtesy were those of the King of Great Britain to the King of Denmark at Copenhagen in April and to the German Emperor at Kiel in June. The latter visit was marked by unusual evidences of cordiality between the two sovereigns and was followed up in August by the conclusion of an arbitration treaty between the two countries similar to that concluded between Great Britain and France in October, 1903. (See RECORD of December, 1903, p. 735.) The visit to the King of Denmark was followed by the opening of negotiations between Great Britain, Denmark and Russia with a view to insuring the neutrality of Denmark in the event of war between Russia and Great Britain. Other arbitration treaties were concluded between Holland and Denmark; between France, Sweden and Norway; between England, Sweden and Norway; and between Spain and Portugal. Similar treaties between Great Britain and Holland, and between Great Britain and Austria are in process of negotiation with prospect of early success. After difficult and protracted diplomatic effort the long expected Russo-German commercial treaty was signed by Chancellor von Bülow and M. Witte at Berlin on July 28. The duration of the treaty is twelve years. The other details have not been made public, but it is stated that Russia accepts the German minimum duties on grain and renounces the intention of introducing higher duties on goods imported by land than on those imported by water. Germany accepts the higher Russian duties on manufactured articles imported into Russia. Other commercial treaties were concluded between Italy and Switzerland; between Belgium and Holland; and between Italy and Austria. The Italian-Swiss agreement provides for high duties on Italian wines imported into Switzerland and similar duties on Swiss machinery, silks and textile products imported into Italy; the Austro-Italian agreement permits Italian fruits to be imported into Austria free of duty, favorable treatment is accorded a limited quantity of Italian wine, and reciprocal rates on horses, wood, and machinery are conceded to Austria. Commercial treaties are in process of negotiation between Austria and Germany; between Austria and Switzerland; and between Germany and Roumania. A labor treaty entered into between France and Italy in May, provides that savings-bank funds, old age, accident and invalid funds of each government shall be applied for the benefit of the workmen of each country who shall emigrate into the other, and makes provision for the transfer of deposits from offices of one country to those of the other. Each government also advances certain

pledges with regard to the treatment of the women and children of the other who may be employed in factories and other workshops. On June 30, a convention was concluded between Germany and Sweden whereby Sweden renounces her rights to the city of Wismar which were conferred by the treaty of Malmoe, June 26, 1803. — In spite of strained relations growing out of the Russo-Japanese war and the British expedition into Thibet, Russia and Great Britain reached an agreement for the settlement of a dispute arising out of the seizure by Russian cruisers of Canadian sealing vessels alleged to have been taking seals in the Behring Sea. More recently an agreement was concluded for the protection of the Russian seal fisheries at the Commander Islands. — Increasing signs of a Russo-German rapprochement have been manifest since the outbreak of the war in the East, and German sympathy for Russia has not been disturbed by occasional Russian seizures of German merchant ships in the Red Sea. Of international significance was the apparently complete rupture between the French government and the Vatican in July. Shortly after protesting against the visit of the president of France to the king of Italy, the Pope undertook to discipline two French bishops, summoning them to repair to Rome and to bring their resignations. The French government commanded the bishops to remain at their posts and demanded of the Pope the withdrawal of the letters recalling them on the ground that the action of the Vatican was a breach of the Concordat, the government not having been previously consulted regarding the dismissal of the bishops. The Vatican having declined to withdraw the objectionable letters, the French ambassador to the Holy See was formally recalled, and subsequently the papal nuncio at Paris was notified that his mission no longer had any object. Meantime the French government announced that it favored the abrogation of the Concordat and the absolute separation of church and state. — The problem of finding a Catholic power to act as protector of the Catholics in the far East has occupied the attention of the Vatican. Austria is reported to have declined to assume the task, Spain is regarded as too weak, and the relations between the Vatican and the king of Italy preclude an Italian protectorship. — Relations between Spain and the Vatican have been more cordial. An agreement has recently been reached regulating the status of religious congregations in Spain, and stipulating that hereafter no new convent shall be opened except by royal decree and that new religious orders shall be established in the future only after previous agreement between the Vatican and the government.

AMERICAN-EUROPEAN RELATIONS.—An arbitration treaty between the United States and France was concluded November 1. It is stated that this treaty, like the Anglo-French agreement of October 14, 1903, provides for reference to the Hague tribunal of legal controversies, which do not affect the vital interests, the independence, or the honor of the contracting states, nor the interests of third states.

— The controversy with Turkey concerning the rights and privileges of American citizens in the Ottoman Empire was brought, during the period under review, to something resembling a settlement. On July 24 a personal audience was accorded by the Sultan to Minister Leishman, and an early reply to the demands of the United States was promised. In consequence of further delays, the President directed the Mediterranean squadron then at Villefranche to proceed to Smyrna. The squadron reached Smyrna August 12, and on the following day the sultan sent his answer, giving assurance that no discrimination would thereafter be made against American citizens or educational institutions in the Ottoman dominions, and offering an indemnity of \$22,500 for American property alleged to have been taken by the Turkish government. — Minor incidents in the diplomatic relations of the United States with other powers were the conclusion in June of a corporation treaty with Russia; the notification to Russia by the United States of the willingness of the American government to act jointly with the government of Great Britain in the protection of the seals of the Commander Islands; a protest from the British government against the recent act of Congress restricting trade between the Philippines and the United States to American vessels (see last RECORD, p. 340); and an incident growing out of the violation of the diplomatic privilege of the third secretary of the British embassy by the act of a Massachusetts police justice in fining that official for violating the speed laws of the state. This last matter was amicably settled by the prompt remission of the fine, the rendering of an apology by the state government of Massachusetts and the expression of regret by the Department of State. — A boundary dispute between Brazil and Great Britain concerning the limits of British Guiana was settled through the arbitration of the King of Italy. — An attack by Haitian soldiers upon the persons of the French and German ministers was followed by the appearance at Port au Prince of warships of the offended powers and by demands for reparation. The Haitian government was forced to punish those guilty of the outrage, to make a public apology and to give assurances of security for the future. — The somewhat arbitrary action of the Venezuelan government in seizing the property of the New York and Bermudez Asphalt Company for alleged failure to fulfil the conditions of its concession led to protests from the governments of Great Britain and the United States and the restoration of the property was requested. — Tension between Great Britain and Nicaragua was caused by the alleged seizure by Nicaraguan authorities of British vessels engaged in the turtle fishery. A British warship was sent to Bluefields to enforce the government's demand for reparation.

AMERICAN INTERNATIONAL RELATIONS. — On June 8 the Cuban Senate ratified the second Isle of Pines treaty concluded March 4, 1904 (see last RECORD, p. 337). — Other incidents were: a revival of

the old dispute between **Brazil** and **Peru** concerning the Acre territory, supposed to have been already adjusted (see previous RECORDS); increased tension between **Chili** and **Peru** concerning the possession of Tacna and Arica (see last RECORD, p. 354); and strained diplomatic relations between **Argentina** and **Uruguay** owing to the alleged failure of the Argentine government to maintain strict neutrality as regards the Uruguayan insurrection. In October a treaty was concluded between **Chili** and **Bolivia** for the settlement of various long-standing disputes.

INTERNATIONAL PEACE CONFERENCE. — In September the Interparliamentary Union for International Arbitration met at St. Louis and adopted resolutions suggesting that an international conference be called by the President of the United States for the purpose of considering: (1) the questions which the Hague Conference relegated for discussion at a future conference; (2) the negotiation of arbitration treaties; and (3) the advisability of establishing an international congress to convene periodically for the discussion of international questions. These resolutions were presented to the President of the United States on September 24; and on October 21 the State Department sent to the representatives of the United States accredited to the governments signatory to the act of the Hague Conference of 1899, a circular letter proposing a **second Peace Conference** at the Hague. As topics of discussion the American government suggested primarily the subjects which at the Hague Conference were proposed for future consideration, *viz.*, the rights and duties of neutrals, the inviolability of private property in naval warfare, and the matter of the bombardment of ports, towns and villages by naval forces. — Special topics further suggested were the distinction between absolute and conditional contraband of war, the inviolability of official and private correspondence of neutrals and the treatment due to refugee belligerent ships in neutral ports. — In conclusion it was suggested that a procedure should be adopted by which states non-signatory to the acts of the Hague Conference might become adhering parties. Included in the letter were the resolution of the United States Congress of April 28, 1904, in favor of the exemption of private property at sea, not contraband of war, from capture or destruction by belligerents, and the resolutions of the Interparliamentary Union noted above.

II. THE UNITED STATES.

NATIONAL AND STATE ELECTIONS. — The Republican National Convention met at Chicago, June 21, and organized by the election of Elihu Root of New York as temporary chairman and Joseph Cannon of Illinois as permanent chairman. In his address to the convention Mr. Root declared that it would be the policy of the Republican party to treat the Philippines as it had treated Cuba, *i.e.*, to establish in the Philippines, under the protectorate of the United States,

an independent government, so soon as the inhabitants should be prepared for self-rule. On June 23 Theodore Roosevelt of New York and Senator Charles W. Fairbanks of Indiana were unanimously nominated as the candidates for President and Vice-president respectively. The platform adopted by the Convention advocated the maintenance of the gold standard, legislation for the encouragement of the merchant marine, the maintenance of a powerful navy, the exclusion of Chinese labor, the enforcement of the civil service law, "liberal administration" of the pension laws, the maintenance of the "principles of protection," the readjustment of the existing duties only where the "public interest demands," the settlement of international differences by arbitration and the reduction of the representation in Congress of any state which by special discrimination denies the elective franchise to any class of citizens. Combinations of capital and labor alike were declared to be the "result of the economic movement of the age neither of which must be permitted to infringe upon the rights and interests of the people, but both of which are entitled to the protection of the laws." George B. Cortelyou, Secretary of the Department of Commerce and Labor, was selected as chairman of the national committee. — **The Democratic National Convention** met at St. Louis, July 6, and organized by the election of John S. Williams of Mississippi as temporary chairman and Champ Clark of Missouri as permanent chairman. On July 9 Alton B. Parker of New York was nominated on the first ballot as the candidate for President, and Henry G. Davis, of West Virginia, was nominated as the candidate for Vice-president. Mr. Parker's leading opponent for the nomination, W. R. Hearst of New York, received 200 votes in the convention, but before the results of the first ballot were announced Parker's nomination was made unanimous. The Democratic Platform advocated greater economy in the administration of the government, legislative investigation of departments suspected of harboring corruption, a "wise, conservative and business-like revision and a gradual reduction of the tariff by the friends of the masses," a reduction of the duties on trust-made articles, an enlargement of the powers of the Interstate Commerce Commission, a reciprocity treaty with Canada, a reduction of the army to a point "historically demonstrated to be safe and sufficient," a liberal increase of the navy, generous pensions for surviving soldiers and sailors "not by arbitrary executive order but by legislation," the "open door" in the Orient and independence for the Philippines. The construction of the Panama Canal was endorsed but the methods by which the canal concession was secured were strongly condemned. On the trust question the platform denounced the policy of the Republicans and demanded the "vigorous and impartial enforcement" of the anti-trust statutes. As reported by the sub-committee, the platform contained a "plank" virtually accepting the gold monetary standard, but mainly through the influence of Mr. Bryan this was stricken out in the full committee, and as finally adopted

the platform contained no reference to the currency question. During the closing session of the convention, July 9, a telegram from Mr. Parker to one of his leading supporters was made public, announcing that he regarded the gold standard as irrevocably established and declaring that, if his views on this matter were unacceptable to the majority of the convention, he wished it to select another candidate. After heated discussion the party leaders suggested, and the convention agreed, that a reply should be sent to Mr. Parker stating that the gold standard was not an issue and that nothing in his views precluded him from accepting the nomination. Thomas T. Taggart of Indiana was selected as chairman of the Democratic national committee. — The **Populist National Convention** met at Springfield, Illinois, July 5 and nominated Thomas E. Watson of Georgia for President and T. H. Tribbles of Nebraska for Vice-president on a platform similar to the Populist platforms of 1892, 1896, and 1900. The Prohibitionist party, the Social Democratic party and the Socialist Labor party also nominated regular tickets for President and Vice-president. — **State and Congressional Elections** in Oregon, June 6, in Vermont, September 5, and in Maine, September 12, were regarded as presaging Republican success in the national election. In Oregon the Republicans elected all the Congressmen; in Vermont they obtained a majority of over 30,000; in Maine, a majority of about 27,000. — The national campaign was characterized by lack of enthusiasm and absence of excitement, until, towards the close, Judge Parker asserted that the selection by the Republican party, as the manager of its campaign, of the former Secretary of Commerce, who possessed the secrets of the corporations, and the solicitation by him of campaign contributions from the corporations, were scandalous acts that suggested corrupt practices. The implication that the corporations were being blackmailed was declared by Mr. Roosevelt to be "atrociously false;" and it was officially denied that Mr. Cortelyou possessed any corporation secrets. The **national elections**, held on November 8, resulted in an overwhelming Republican victory. Mr. Roosevelt carried all the Northern states and also West Virginia and Missouri, securing 335 electoral votes as against 133 for Judge Parker. — At the close of this **RECORD** the eight electoral votes of Maryland were still in doubt. The returns further indicate a popular plurality for Roosevelt of about one and three-quarter millions. In the next Congress the House of Representatives will apparently contain 242 Republicans and 144 Democrats; the Senate, 56 Republicans and 34 Democrats. — In Massachusetts, Missouri, and Minnesota and apparently in Colorado, Democratic governors were elected, although these states gave Mr. Roosevelt large majorities. — Immediately after the election President Roosevelt issued a statement that under no circumstances would he accept a nomination for an additional term.

INTERNAL ADMINISTRATION. — The following changes were made in the **cabinet**: William H. Moody of Massachusetts was appointed

Attorney-General to succeed P. C. Knox who resigned to accept an appointment as United States Senator from Pennsylvania in the place of Senator M. S. Quay, deceased; Paul Morton of Illinois was appointed Secretary of the Navy to succeed William H. Moody; Victor H. Metcalf of California was appointed Secretary of the Department of Commerce and Labor to succeed G. B. Cortelyou who resigned to become chairman of the Republican national committee; and Robert J. Wynne, First Assistant Postmaster-General, was appointed Postmaster-General to succeed Henry C. Payne deceased. (For other appointments, see *DEPENDENCIES*.)—A change in the administrative work of the Civil Service Commission was effected by the organization of thirteen districts, each to be under a designated agent who will be required to report from time to time to the commission at Washington. The main purpose of the reform is to relieve postal officers of routine work connected with civil service examinations and to secure the keeping of a more accurate record. — The criminal prosecutions on account of frauds and irregularities in the postal service (see last *RECORD*, p. 342) came to an end on May 25 with the acquittal of H. J. Barrett and General James N. Tyner, Ex-Postmaster-General and later Assistant Attorney-General of the Post-Office Department, both charged with conspiracy to defraud the government in the matter of postal contracts. — An investigation of the alleged traffic in forged naturalization papers in the city of New York was undertaken by the federal authorities in conjunction with the New York state superintendent of elections. It was discovered that a band of swindlers were engaged in a systematic business of selling at high prices fraudulent naturalization certificates, the number sold during the last year being estimated at not less than 100,000.

THE DEPENDENCIES.—In Porto Rico the proposed five-million-dollar loan for permanent public improvements was the chief subject of public interest. At the last regular session of the Porto Rican Assembly a commission was appointed to report on the need of such a loan, the form which it should take and the terms upon which it could be placed. On May 23 a special session of the Assembly was convened to consider the report of the commission which strongly recommended the proposed loan. The Executive Council concurred in the recommendations of the committee, but the House of Delegates disagreed as to the form of the loan and the uses to which it should be applied, and all efforts to reach a compromise were fruitless. On July 4 the new governor, Beekman Winthrop, assumed office. His inaugural address urged a further extension of the public school system and the building of better highways. Other changes in the Porto Rican administration were: the appointment of Roland P. Falkner of Pennsylvania to be commissioner of education *vice* S. M. Lindsay, resigned; of Regis H. Post of New York to be secretary of Porto Rico; of Erastus S. Rockwell of the District of Columbia to be auditor; and of A. G. Wolf of the District of Columbia,

to be associate justice of the supreme court *vice* Judge Sulzbacher resigned. — In the **Philippines** a new revenue law was enacted by the commission in July. It repeals many taxes imposed under the Spanish law and levies new taxes on alcoholic products, beer, tobacco, cigars, cigarettes and matches, and provides for certain license taxes. It is estimated that the annual revenue from the new law will aggregate about five million dollars in gold. — The Secretary of War decided in May to place one hundred or more Filipino students in American universities during the forthcoming year. Their expenses are to be paid by the government, and in return they are required to enter the government service of the Philippines upon the completion of their courses of study and continue therein for a period of five years. — The **pacification of the Philippines** seems complete everywhere except on the island of Mindanao. On May 8 a detachment of United States infantry consisting of thirty-nine enlisted men while searching for Datto Ali, a troublesome insurgent leader, was attacked by a band of Moros near Lake Liguasan and two lieutenants and fifteen men were killed. On August 25 a detail of constabulary was ambushed on the island of Leyte by bandits and the captain of the detail killed. In October General Corbin succeeded General James F. Wade in command of the Philippines.

THE ISTHMIAN CANAL. — On May 9, in pursuance of the act of Congress passed in April (see last RECORD, p. 347), the President formally promulgated rules for the government of the Panama Canal zone. The direction and supervision of the work of the Canal Commission was intrusted to the Secretary of War, and General George W. Davis, the army member of the commission, was appointed governor of the American zone with authority to appoint a judge who shall exercise the judicial power therein. Osceola Kyle of Alabama was appointed to this position. Until the expiration of the fifty-eighth Congress the Canal Commission will exercise legislative powers over the American strip. The President's instructions authorize the commission to make needful rules and regulations for the government of the zone, to establish therein a civil service system, to acquire the necessary land and other property by expropriation, to make contracts for engineering and construction works, and to make requisitions on the War Department for funds needed. The municipal laws of the canal zone are to be administered by the ordinary tribunals substantially as they were before February 26, 1904. Competent local officers are to be continued in their positions. Those provisions of the federal constitution which relate to due process of law in judicial procedure, together with the various other guarantees for the protection of individual liberty, are "extended" to the canal zone. The commission is empowered to exclude various classes of persons whose presence may impede the prosecution of the work of excavation, and it is expressly instructed to annul all laws or franchises which permit lotteries or other gambling devices forbidden by the laws of the United States. On the

same day on which the regulations for the government of the canal zone were promulgated, the Secretary of the Treasury delivered to J. P. Morgan and Company, agents for the government, a warrant for the sum of \$40,000,000 in full payment of the property and franchises of the Panama Canal Company. On May 20 a warrant for \$10,000,000 was delivered to the agents of the Panama Republic in payment of the concessions granted through the Hay-Varilla treaty (see last RECORD, p. 346). — On June 24 an order was issued by the War Department for regulating the importation of goods into the canal zone. Imports from the United States are to be admitted free of duty; upon those from other countries the regular rates prescribed by the Dingley tariff act will be imposed. Two collection districts were established, one at Ancon, the other at Cristobal, and a convenient number of post-offices were provided for.

THE FEDERAL JUDICIARY. — In the case of *Dorr v. United States* the Supreme Court decided on May 31 that the inhabitants of the Philippine Islands, although owing allegiance to the United States, are not entitled to the right of trial by jury in the absence of congressional enactment granting such right. Justice Harlan dissented and asserted that the view of the majority was equivalent to an amendment of the constitution. In the case of *Kepner v. United States*, the Supreme Court upheld the right of the government of the Philippines to take an appeal in criminal cases from the decision of a lower court, such appeal not being in violation of the Fifth Amendment which prohibits the placing of an accused person twice in jeopardy of life or limb for the same offense. Justices Brewer, Holmes, White and McKenna dissented. — In the case of *United States v. Sing Tuck* the Supreme Court decided April 25, that the mere allegation of citizenship by a Chinese person seeking admission to the United States was not sufficient to deprive the inspector of jurisdiction under the alien immigrant law, and that the Chinese applicant could not resort to the courts without first taking the appeal, provided for in the act, to the Secretary of Commerce and Labor. — An act of the legislature of Texas directed solely against railroad companies and imposing a penalty for permitting certain obnoxious grasses to grow on their right of way was held in *Missouri, Kansas and Texas Railroad Company v. May* not to be contrary to the Fourteenth Amendment. The right of the states to classify the subjects of legislation and enact laws affecting differently persons and property falling within the different classes was upheld by the Supreme Court in the case of *Field v. Barber Asphalt Company*. — The right of the Supreme Court to review the judgment of the United States District Court of Porto Rico in a criminal case was sustained in *Crowley v. The United States*; and the right to bring an action against the United States in the District Court for Porto Rico whenever such action is allowed in district or circuit courts of the United States was upheld in *Hijo v. United States*. — By a decision of Judge Bradford, United States circuit judge for the District

of New Jersey, the directors of the Northern Securities Company were restrained from redistributing the stock of the company according to the method agreed upon, whereby each shareholder was to receive as an equivalent of his Northern Securities stock a proportionate amount of stock in both the Great Northern and the Northern Pacific railroads (see last RECORD, p. 348).

LABOR AND CAPITAL — The deplorable conditions attending the **Colorado coal strike** (see last RECORD, p. 349) have continued with little prospect of early improvement. In some localities conditions amounting to anarchy have prevailed and assassination and riots have been matters of common occurrence. Many non-union miners have been beaten and driven out of the community. Printing-presses and other property have been wantonly destroyed. The second week of June was one of terrorism in Teller County growing out of the killing of fifteen non-union miners and the wounding of a number of others by the explosion of an infernal machine placed by Union sympathizers under the railroad platform at Independence, a station near Cripple Creek. At Victor, on the same day, a mass meeting held to discuss the outrage led to a riot; troops who were called in to quell the disturbance were fired upon from windows of neighboring houses; they returned the fire and charged upon the hall in which the meeting was held and killed a number of the rioters. One of the incidents of the affair was the action of the Mine Owners' Association in forcing the sheriff of the county to resign his office under threat of hanging. Other local officials suspected of sympathy with the union miners were dealt with in a similar fashion. After the riot at Victor, Teller County was proclaimed to be under martial law and the adjutant general of the state militia, Sherman M. Bell, took charge of affairs. In a pitched battle with a force of union miners at Dunnville on June 8 General Bell captured fourteen of them and killed several others. This was followed by a second collision at Big Hill in which other captures were made without loss of life on either side. Meantime the Citizens Alliance sent out a decree that every person connected with a labor union must either sever his connection with such organization or leave the district. The military authorities, aided by the Citizens Alliance, soon restored a measure of order. Four hundred union miners were arrested and confined in a military "bull pen" and a large number of these were deported from the state and left on the prairies of Kansas, only to be turned back by the authorities of that state. Five hundred others were summoned to headquarters and given their choice of leaving the country or suffering confinement in the "bull pen."—By a decision of the state supreme court in the case of Moyer, rendered on June 6, the right of the governor to declare martial law and suspend the writ of *habeas corpus* was sustained. — An extensive strike in the principal **meat packing establishments** of the country began on June 12 and lasted until September 8. The cause of the strike was the action of the Chicago

packers in reducing the wages of unskilled laborers from 18½ to 17½ cents per hour. After unavailing protests the skilled laborers decided by referendum to strike in the interest of the demands of the unskilled workmen. They were joined by the employees in the large packing establishments of Omaha, Kansas City, New York and other cities, aggregating about 50,000 men altogether. On July 26 the butchers were joined by the workmen in the various allied trades, amounting to about 7,500 men. As early as July 20 under pressure of public opinion the packers and labor leaders reached an agreement to arbitrate the question of hours and wages and the strike was called off; but the packers having refused to discharge all the extra men hired after July 12, the strike was renewed an hour after the resumption of work, on the ground that the packers had broken their agreement with regard to the re-employment of the strikers. The strike now grew to serious proportions. The strikers prepared for a long struggle and the butchers began importing large numbers of workmen from outside points. The usual disorders incident to a great strike followed; non-union laborers were assaulted and beaten, some were killed, and many conflicts with the police occurred, especially in Chicago. After various conferences between representatives of the packers and strikers, an agreement was reached on September 8 and the strike was called off. The packers agreed to re-employ the strikers as rapidly as places could be found, and both skilled and unskilled workmen were to receive the same wages as before the strike. — A strike of less serious proportions was that of the cotton mill employees of Fall River, Massachusetts in July, in consequence of a reduction of 12½ per cent in wages. About 26,000 employees were involved and no attempt was made to operate the mills affected. At the close of this RECORD all attempts to terminate the strike had been unsuccessful. — Strikes in the building trades of New York City and Philadelphia have occurred during the summer. — Judicial decisions affecting labor were rendered by the supreme courts of Illinois and Wisconsin, holding that contracts by which employers agree to employ only members of labor unions ("closed shop") are illegal on the ground that such contracts tend to create a monopoly of labor in favor of labor unions; by the supreme court of Indiana, holding that a statute requiring the weekly payment of wages is unconstitutional on the ground that, by interfering with the liberty of contract, it deprives citizens of their liberty and property without due process of law; and by the supreme courts of Illinois and Ohio, denying that the duty of giving a discharged employee a letter of recommendation or clearance card is imposed upon employers by the common law. A considerable number of injunctions were issued in various states forbidding strikers from interfering with non-union laborers. Of interest was the election of Judge George Gray of Delaware to be president of the National Civic Federation as the successor of the late Senator Hanna.

MUNICIPAL AFFAIRS. — An active and successful campaign was waged by the city of Chicago to secure the adoption at the November election of a constitutional amendment empowering the legislature to grant the city a special charter whereby its government may be reorganized, its power to issue bonds for permanent improvements increased and the system of justice and police courts improved. The proposed amendment authorizes the legislature to permit the city to issue bonds up to five per cent of the total actual value of all taxable property instead of five per cent of the assessed value, and to establish a new method of assessment and collection. — In Buffalo startling disclosures were made regarding the administration of various departments of the city government, and seven aldermen were indicted on the charge of bribery. In Memphis a citizens' committee demanded the resignation of the mayor and other officials or the suppression of the gambling places. Under the pressure thus exerted the city officials have entered upon a policy of reform. In New York City the mayor removed in October all the members of the civil service commission for violation of the laws and appointed new commissioners.

LYNCH LAW. — No fewer than fifty-five cases of lynching have been reported since May 15, all except two of which occurred in the southern states. Of these, fifteen occurred in Georgia, seven in Mississippi, five in Alabama and four each in Kentucky and Louisiana. In the two Northern states of Idaho and Wyoming white and black murderers were lynched by white mobs. Of the persons lynched sixteen were accused of rape, three of attempted rape, twenty of murder, two of conspiracy to murder, two of murderous assault, two of uttering threats, three of offering insults to white women and one of burglary, while "race prejudice" was given as the reason for three lynchings. In three cases the lynching was done by negro mobs, the victims in each instance being negroes. In Louisiana a white man was lynched by a white mob for killing a railroad conductor, and in Wyoming a white man was lynched for murderous assault on a white girl. The most widely discussed case of lynching occurred at Statesboro, Georgia, where on August 16 a mob overpowered the militia, took from the officers two negroes, Reed and Cato, who had been legally convicted of murder and sentenced to death, and burned them at the stake. On the following day three other negroes, charged with complicity in the crime for which Reed and Cato were burned, were lynched. It having been discovered that the company of militia which was charged with protecting the negro prisoners had thrown away or lost its supply of ammunition, the captain was court-martialed. In Alabama a militia company which failed to protect a negro prisoner from a white mob was by order of the governor mustered out of service. At Eupora, Mississippi, the sixteen-year-old victim of a negro assisted in the lynching of her assailant in the presence of three thousand spectators by adjusting the noose and leading the horse from under him.

At Cedartown, Georgia, the colored assailant of a thirteen-year-old girl was shot to death and his body burned on the public square. Unprecedented in the annals of Mississippi was the conviction and condemnation to life imprisonment by a white jury of a white man for assaulting a negro girl. — In various Southern localities there has been a recrudescence of the white cap movement. In parts of Mississippi it has assumed such serious proportions as to lead to organized effort among the more substantial classes of white people to prevent the driving off of the negro land owners. In this state energetic action has been taken by the governor to break up the white cap organizations.

III. LATIN AMERICA.

In **Argentina** Señor Manuel Quintana was elected President of the republic, and was duly inaugurated in October. His message at the opening of Congress declared the country to be in a prosperous condition, and announced various legal and administrative reforms. — In **Bolivia** a presidential election took place on the first of May resulting in the choice of Colonel Montes as President. — The unfavorable industrial and financial condition of **Brazil** has been a subject of general discussion. A widespread famine was reported in the northern portion of Brazil while the federal treasury showed a deficit of over \$4,000,000. Nevertheless an extensive naval program has been undertaken by the government. — In **Colombia** a presidential election occurred on July 4. The contest was highly exciting and the republic was brought to the verge of revolution. General Rafael Reyes was elected over Dr. Velez, and assumed office on August 7. — In the **Cuban** Congress the abstention of the members belonging to a radical faction made it impossible for the House of Representatives to transact business for lack of a quorum. In July the soldier members of the radical faction joined the moderates in order to secure the passage of a soldiers' pay bill, but, this done, they resumed their attitude of obstruction. — In **Chili** a cabinet crisis occurred in May. — In **Mexico** two important constitutional amendments were ratified. One of these creates the office of vice-president of the republic; the other extends the presidential term from four to six years. In July Porfirio Diaz was reelected as President of the republic, and Rumon Carrol as Vice-president. — In **Paraguay** a revolution has been in progress throughout the summer and autumn. In August a reign of terror was reported to exist in Assuncion; business was suspended and the streets deserted. The insurgents under General Ferreira established a provisional government at Villa del Pilar and at the close of the period under review their strength was reported to be daily increasing. — In **Peru** in August Señor Jose Pardo was chosen President. The revolution in **Uruguay** (see last RECORD, p. 354) came to an end early in November, the gov-

ernment granting to the insurgents complete amnesty and the restoration of their property. — In the new Republic of Panama the government has decided to adopt a gold monetary standard. — The revolution in Santo-Domingo (see last RECORD, p. 354) came to an end in June, the insurgents agreeing to submit to the authority of the government and deliver up their arms, in return for which the government granted a general amnesty and agreed to assume the expense incurred by the revolutionary authorities. — A new constitution, the fifteenth since the creation of the republic, was promulgated in Venezuela in May. Of interest to other countries are the provisions requiring foreigners who wish to enter the republic to present identification papers and certificates of good character from the government of the country from which they emigrate.

IV. EUROPE.

GREAT BRITAIN. — On August 15 Parliament was prorogued until November 3. The royal address referred to the friendly relations between the King and foreign powers, the visits of the King to the Emperor of Germany and to the King of Denmark (see EUROPEAN INTERNATIONAL RELATIONS), the various treaties concluded with foreign powers (see last RECORD, p. 334), military operations in Somaliland (see AFRICA, below), the settlement of the boundary dispute with Brazil (see AMERICAN-EUROPEAN RELATIONS, above) and the expedition to Thibet (see INTERNATIONAL RELATIONS, THIBET). The address expressed regret at the continuance of hostilities between Russia and Japan and declared that the government would "energetically support the subjects of the king in the exercise of the rights recognized by international law as belonging to neutrals." The session of Parliament was marked by unusual turmoil. The rather formidable program of the government provoked the hostility of the opposition to an unusual degree, and led its members to resort to obstruction tactics. They harassed the parliamentary leaders with motions for censure and adjournment, with questions and denunciations, and at times by hoots and jeers prevented the premier from speaking. Early in July the government was driven to adopt the closure on several important measures and to hold all-night sittings. At the same time it was compelled to drop from its program not less than twenty-one of the measures which it had set out to pass and some of which had already been the subject of extended discussion. Among these was the Alien Immigration bill, which proposed to restrict immigration into England and which, in spite of strong objection to its alleged anti-Semitic character, had already passed its second reading. Other important measures dropped were: the Scotch Education bill, the Port of London bill, the Irish Land bill, the Cunard Loan bill, and the Penal Servitude bill, the latter of which proposed important reforms in the existing method of punishing criminals. Bills which passed the second

reading but which apparently did not become law were: the Prevention of Corruption bill, which has been before Parliament many years and which is aimed at the evil of blackmailing; the Street Betting bill, which proposed to prohibit betting in the streets, parks, gardens and saloons; and the Trades Union bill, which proposed to legalize peaceful picketing, to amend the law of conspiracy in so far as trade disputes are concerned and to protect the funds of trades unions against legal process for recovery of damages resulting from the action of members of such unions, the latter feature being intended to meet the situation caused by the Taff Vale decision. Among the few acts which became law the most important was the Licensing bill, which was the subject of debate throughout the greater part of the spring and summer and which has excited general interest in Europe and America. Its most important feature is a provision that, whenever the renewal of a license to sell intoxicating liquor is refused upon public grounds to a man who has not forfeited it by misconduct, he shall receive compensation from a fund provided by a graduated tax upon all the liquor dealers in the district. The bill encountered the most strenuous opposition both in and out of Parliament and was passed only after the application of the closure. Other bills which became law were: the Welsh Coercion act designed to compel the Welsh county councils to administer the Education act of 1902; an act to carry into effect the Anglo-French Colonial agreement of April last (see last RECORD, p. 334); and an act designed to facilitate the earlier closing of shops throughout the United Kingdom. A bill enabling women to sit in municipal councils was rejected by the House of Lords and a bill to repeal the Irish Crimes act was defeated in the House of Commons. — Several unsuccessful attempts were made to upset the government on the fiscal question, but Premier Balfour resisted every attempt to drag this question into the discussion, contending that it was not before Parliament at the present session. From this position, in which Mr. Chamberlain heartily concurred, he could not be moved by the taunts of cowardice levelled against him by the opposition. On May 18 a motion was made condemning the "protective taxation of food as burdensome to the people and injurious to the Empire." As an amendment to this motion the government carried a resolution declaring that the House considered it unnecessary to discuss the question of fiscal reform and expressing the confidence of the House in the present administration. The government was put to the test again on August 1, by a motion of Sir Henry Campbell-Bannerman proposing to censure the government for the prominent part taken by two members of the cabinet on July 14 in the newly reconstructed Liberal-Unionist council of which Mr. Chamberlain was elected president, and which, on the day of its reorganization, adopted a resolution favoring fiscal reform and preferential treatment of the colonies. The resolution of censure was rejected by a majority of 78 votes. — On July 20 the

report of Mr. Chamberlain's **tariff commission** on the iron and steel trades (see last RECORD, p. 355), was made public. It defends the position of Mr. Chamberlain, declares that the decline of British industries is due to German and American "dumping" and recommends (1) a low scale of duties for countries admitting British wares on fair terms; (2) a lower tariff for the colonies; and (3) a maximum tariff subject to reduction by negotiation. In the meantime Mr. Chamberlain has continued his campaign with unabated vigor. In **by-elections** in the divisions of Osmestry, Harborough, Devonport and Reading the opposition have triumphed. — The report of the royal commission on the **militia and volunteers** (appointed in April, 1903) contains recommendations for increasing the efficiency of both forces. The militia is declared to be unfit at present for defense and the volunteer force unqualified to take the field against a regular army. The commission recommends the continental system of compulsory training for the whole able-bodied male population in a period of continuous service with the colors, such instruction to be given by a body of specially educated and highly trained officers. The report has called forth much popular opposition. — The decision of the House of Lords in the **Free Church Case**, rendered in August, awarded property estimated to be worth from \$50,000,000 to \$75,000,000 to the remnant of the Free Church which refused in 1900 to follow the overwhelming majority of the church in its union with the United Presbyterians. The beneficiaries of the decision are twenty-eight Highland ministers of Gaelic speaking congregations. The decision is based on the view that a theoretical acceptance of the principle of establishment (although coupled with dissent from the church actually established) is one of the fundamental tenets of the Free Church; that the donors of the funds of that church acted on the expectation that it would continue faithful to that tenet; and that by uniting with the "voluntaryist" United Presbyterians the majority abandoned this tenet and were therefore no longer entitled to administer the funds which the Free Church held in trust.

THE BRITISH COLONIES AND INDIA. — The Watson Labor ministry for the commonwealth of AUSTRALIA (see last RECORD, p. 357) was short lived. It was defeated in July on a motion for the recommendation of the clause of the arbitration bill granting a preference to trade unionists. The governor-general having declined to accede to Mr. Watson's request to dissolve parliament, a new **coalition cabinet** was constituted under the premiership of Mr. Reid. — In August the commonwealth parliament definitely selected, for the **federal capital**, Dalgety, a small interior village in New South Wales about 300 miles south of Sydney. The commonwealth budgetary statement, presented to the House in October, showed a total revenue of £4,631,056, and an expenditure of £4,252,562, the balance being returnable to the states. — Changes of government have taken place in West Australia where a

labor ministry was constituted, in South Australia, in New South Wales and in Queensland. Parliamentary elections have occurred in West Australia, New South Wales and in Queensland. The labor vote won a notable victory in the two first mentioned states and through the activity of the women suffragists the opposition triumphed in the latter on the issue of the extravagance of the administration. — Worthy of note in the affairs of **New Zealand** were: the retirement of the governor, Lord Ranfurley, and the inauguration in June of his successor, Lord Plunkett; the adoption by the Legislative Council of a resolution expressing regret at the introduction of Chinese laborers on the Rand (see last RECORD, p. 367) without the approval of the white population, and the announcement of the government program in the House of Representatives in June. — In the affairs of **Canada** an important political event was the appointment of Earl Grey, lord-lieutenant of Northumberland, as governor-general to succeed Lord Minto, whose term expired in October. — The **Dominion Parliament** was prorogued on August 10, after a session of five months. The legislation of the session included certain amendments to the contract between the Grand Trunk railway and the government, an act for the re-organization of the militia and an act against "dumping." The militia bill provides for a reorganization of the Canadian militia on the lines of the reforms recently adopted in Great Britain. Instead of a minister of militia and a commander-in-chief as heretofore, a council of seven members consisting of three civilians and four soldiers, with a chief of staff and an inspector-general, is to have control. The "dumping" act was a measure designed to restrict, by the imposition of countervailing duties, the importation from the United States of certain wares at prices lower than the home prices. — Two measures which were the subject of extended debate and the latter of which passed the House of Commons were: an alien labor bill which proposed to prohibit the landing of paupers, diseased persons, polygamists and anarchists, and to make railway companies illegally importing aliens into Canada liable for the expense of their deportation; and a bill authorizing the government to cancel any license issued to manufacturers who entered into exclusive contracts with dealers. — The **Canadian budget** was presented early in June with a statement that the surplus for the last fiscal year was \$14,345,166, and that the estimated surplus for the current year exceeded \$16,000,000. The **Election** of November 3 gave the Liberals the extraordinary majority in parliament of at least seventy-five. The chief issues raised by the Conservatives were preferential trade with other parts of the British empire and higher protection for manufacturers, the "extravagance" of the government, the Pacific railway scheme (see last RECORD, p. 356), and the Dundonald incident (see below). Among the Conservatives who were defeated was Robert Borden, the Conservative parliamentary leader. An incident widely discussed both in and out

of parliament was the **dismissal of Lord Dundonald** from the command of the Canadian militia for delivering a speech in which he condemned the interference of politicians in military affairs. — Events of interest in **India** were the re-appointment of Lord Curzon as viceroy and the successful termination of the expedition to Thibet (see above, **INTERNATIONAL RELATIONS**. For the British South African colonies, see **AFRICA**).

FRANCE. — The all-absorbing topic in France has been the long expected **rupture with the Vatican** (see **EUROPEAN INTERNATIONAL RELATIONS**, above). On May 27 after a long and exciting debate the Chamber of Deputies by a vote of 427 to 95 approved the action of the government in recalling the French ambassador to the Vatican. A Socialist motion to break off all relations with the Vatican and to denounce the Concordat was, however, defeated by a vote of 385 to 146; and a resolution offered by a Nationalist deputy requesting the government to negotiate with the Pope for a separation of church and state was defeated by a vote of 507 to 18. After this, Premier Combes announced that the question of the separation of church and state would be taken up for discussion in January, 1905. During a discussion of the religious question the premier stated that he and his son had been approached by representatives of the Chartreuse monks who offered large sums of money to secure the revocation of the order of expulsion. The Chamber appointed a committee to investigate the charges and after taking a vast mass of testimony it reported that the premier's charges were unfounded. On July 12, however, the Chamber, after a tumultuous session, rejected the report of the committee by a large majority and sustained the premier's charges of attempted bribery. On the following day parliament adjourned until October. — In May a decree was promulgated ordering the removal of all crucifixes and pictures from the schools and court rooms and designating Good Friday as the day for the execution of the order. — At the opening of parliament in October the government won another victory by a vote giving precedence to the discussion of the relations between France and the Vatican. Premier Combes reaffirmed that the "separation of the church and state has become inevitable." — The result of the **municipal elections** in May showed that the Nationalists had lost considerably in Paris. In the provinces the result was generally favorable to the government except in some of the large industrial centers, such as Bordeaux, Lille and Havre. — The **election for Councils General** took place in August. The complete returns showed a ministerialist gain of 109 seats. A feature of the industrial situation was a great strike among the employees in the dock yards of Marseilles in September.

GERMANY. — The **Reichstag** passed in May the so-called Stengel law which introduces important modifications into the imperial system of finances, notably as regards the matricular contributions of the states

(see last RECORD, p. 360). The unfavorable position of the imperial finances, the necessity for retrenchment and the means of meeting a large deficit were the subjects of prolonged and lively discussion. Other imperial laws enacted since the last RECORD extend the application of the law relating to insurance against invalidity and old age to the commercial marine industry; provide for the stamping out of phylloxera; and institute special tribunals to settle conflicts between capital and labor in commercial industries. A provision of the latter law which met strong opposition was that prohibiting women from serving as members of the new tribunals. An important measure which reached an advanced stage on the legislative calendar was the inland canal bill which carried an appropriation of \$100,000,000 for the enlargement and extension of the canal system. Two other measures which the government has undertaken to pass provide indemnification for innocent persons who have been subjected to criminal prosecution and place at the disposal of various relief bodies a grant of 3,000,000 marks for the benefit of railway employees. The session was marked by attacks on the foreign policy of the empire and by evidences of the growing unpopularity of the imperial chancellor. — Of general interest to the people of Germany was the announcement in September of the betrothal of Crown Prince Frederick William to the Duchess Cecilia of Mecklenburg-Schwerin. — In **Baden** a law was adopted extending the state suffrage so as to make it coincident with that for the election of members of the Reichstag. In **Bavaria** a suffrage reform measure was rejected. In **Wurtemberg** a school bill, passed by a large majority in the lower chamber and strongly supported by the government, was rejected in the upper chamber, chiefly through clerical influence. The result was an agitation for the "reform or suppression of the upper chamber." A resolution which was the subject of heated discussion in the **Prussian Landtag** and which passed the Chamber of Deputies declared that public elementary schools should be either Protestant or Catholic, and that each should be attended exclusively by pupils of one faith and instructed by teachers professing the creed of their pupils. For the management of the said schools it was furthermore proposed that special school boards should be created to represent the interests of religious education. Among the measures which became law in **Prussia** were: an act providing for a loan of 146,815,000 marks for the completion of state railroads; an act for the protection of game; and an act to raise a loan of 15,000,000 marks with which to improve the conditions of habitation among workmen in the employ of the state and to provide assistance for such as are incapable of performing manual labor. The Pomeranian bank scandal in which many prominent persons were involved, among them Prince von Mirbach, master of ceremonies at the coronation of the Empress, aroused much indignation and led to a resolution of the Prussian Landtag. Prince Mirbach was convicted by the Königsberg seven members

of the Social Democratic party were arraigned on the charge of high treason for smuggling anarchistic literature into Russia. The prosecution, which aroused much comment unfavorable to the government, proved a fiasco. — **Changes of rulers** have occurred in Saxony by the death of King George and the succession of his son Frederick and in the principality of Lippe-Detmold by the death of the regent. The assumption of the regency by Count Leopold, son of the deceased regent, was opposed by the Emperor but supported by the local government, and by the local diet (see RECORD of June, 1899, p. 381).

ITALY. — The legislative output of the Italian parliament, which adjourned the first week in July, included the enactment of measures for the financial relief of the municipalities of Naples and Rome, both measures involving the expenditures of considerable sums; a bill for the water supply of Apulia; a bill conferring upon the government full power to conclude commercial treaties with Austria and Switzerland; and budget bills embodying the ministerial estimates. The **program for public works** includes the construction of a railway from Cuneo to Nice and of a new direct line from Rome to Naples. An important measure which met defeat in the parliament was the perennial divorce bill. After a parliamentary investigation Signor Nasi, ex-minister of public education and one of the leading statesmen of Italy, was found guilty of falsifying his accounts, misappropriating public funds and of other irregularities in office. The parliament having referred the case to the criminal courts with instructions to begin prosecution, the accused statesman fled to Switzerland. — A subject of lively debate in the Chamber of Deputies was the proposed **increase of the navy**. A parliamentary committee was appointed to inquire into the present condition of the navy and report upon its needs. — By royal decree, promulgated in October, November 6 and 13 were fixed as the dates for the **general elections**, the issues submitted to the electorate including better secondary education, state ownership of all roads, taxation reform, refunding of the state debt, maintenance of the existing scale of military expenditure, prevention of strikes in public employments, and relief of the southern provinces. The elections resulted in a victory for the government, the Conservative gains being due largely to the participation in the election of many Catholics who had abstained from voting since the establishment of Italian unity. An event which caused general rejoicing throughout Italy was the birth of an heir to the throne on September 15. The infant was christened with the name of Humbert and was given the title of Prince of Piedmont. — An incident of the **industrial situation** was a general strike in September inaugurated by the Socialists as a protest against the severity used by the government in suppressing labor disturbances. The strike collapsed after a week's duration. The economic condition of Italy continues to improve, and the state of the national finances is most favorable.

RUSSIA. — An event which was the occasion of general rejoicing throughout the empire was the birth on August 24 of an heir to the Russian throne. The Czarevitch was christened with the name of Alexis, and a decree was issued by the Czar determining the order of succession to the throne. In the event of the death of the Czar before the attainment by the Czarevitch of his majority, the Grand Duke Michael Alexandrovitch shall become regent and the Czarina guardian of the heir apparent. By another decree the Czar conferred various favors and privileges upon his subjects. The most important were the abolition of corporal punishment among the rural classes and its curtailment in the army and the navy; the remission of land purchase arrears due to the state, which benefits a large class of the population both of the empire and of Poland; an all-round reduction in terms of imprisonment for common-law offenses, the sentences of ordinary convicts being reduced one-half and life sentences to fourteen years; a general amnesty for all political offenses except murder; the setting apart of \$1,500,000 from the state funds for the benefit of landless people in Finland; the remission of all fines imposed on the villages, towns or communes of Finland which failed to elect representatives or whose male inhabitants refused to serve on the military recruiting boards during the years 1902 and 1903; and permission to those Finns who left their country without the sanction of the authorities to return within a year. Fines imposed upon Jewish communes for avoidance of military service were likewise remitted and persons under arrest for various offenses were pardoned. These decrees were supplemented by the announcement of various promotions in the army, the navy and the civil service. — In further commemoration of the birth of the Czarevitch a sum of money was set aside from the imperial privy purse for the establishment of 100 scholarships in military and naval schools for the benefit of children of soldiers and sailors killed in the present war. Two million roubles were also set aside for the support of the families of such soldiers. — In September a decree was issued extending the privileges of residence to certain classes of Jews within the pale. A far reaching reform was embodied in a decree of July 11 which abolishes the system of condemning by administrative order persons charged with political offenses and secures to them trial in the courts. — The industrial and political outlook in Russia is most unfavorable. Widespread crop failures and general paralysis of industry have characterized the period under review. The general unrest has manifested itself in an unusual number of political assassinations. On July 28 M. von Plehve, minister of the interior and leader of the reactionary forces in Russia, was killed by the explosion of a bomb thrown at his carriage while he was driving to the railway station in St. Petersburg. The assassin was a young Russian named Lassoneff, of Polish ancestry, who had lived in Finland, and his crime was believed to be part of a widespread plot to murder various high government officials.

After considerable difficulty in finding a suitable person the Czar appointed Prince Sviatopolk-Mirsky, governor-general of Vilna, as von Plehve's successor. On June 15 the governor-general of Finland, Count Bobrikoff, was murdered while entering the senate chamber at Helsingfors. The assassination was ascribed to the revolutionary spirit engendered by the governor's drastic policy in Finland. Prince John Obolensky, formerly governor of Kharkoff was appointed as his successor. Other political assassinations were the murder of the vice-governor of the province of Elizabetopol, of the chief administrator of the Surmalin district in the Caucasus and of the Russian minister to Switzerland. The assassination of von Plehve was followed by agitation for the creation of a responsible cabinet, but the proposed reform did not meet the approval of the Czar. Meantime the new minister of the interior has announced that his administration will be marked by important reforms. — The grave conditions in Finland have continued with but few signs of improvement. The Finnish senate on June 26 issued a manifesto expressing "deep indignation" at the assassination of the governor-general and proclaiming its "allegiance to the mighty Russian crown." On August 28 the Czar issued a ukase summoning the estates of Finland to meet in ordinary session at Helsingfors on December 6, 1904, and commanding the meeting of the Finnish diet in 1907. — To meet the expenses of the war with Japan the Russian government negotiated in May a five per cent loan of \$160,000,000, which was taken by French investors, and a new loan of \$50,000,000 has been announced. (For military operations and diplomatic incidents of the Russo-Japanese war, see above, INTERNATIONAL RELATIONS.)

AUSTRIA-HUNGARY. — The Delegations of the Austrian and Hungarian parliaments assembled at Budapest on May 14 to consider and adopt the common estimates for 1905. Considerable popular surprise was manifested at the unusually large demands for the army and the navy, the amount required being about \$52,000,000. Of this amount more than \$37,000,000 represented extraordinary estimates for the army and for new war vessels. The government declared its determination to increase the efficiency of the army and the navy and to bring them up to the level of modern requirements. Fortunately the financial condition of the dual monarchy is favorable, a large surplus being reported by the minister of finance. — The continued obstruction of the Czechs in the Austrian parliament prevented the carrying out of the government program (see last RECORD, p. 361) and the parliament was adjourned *sine die* early in May. In October the cabinet was reconstructed by Dr. von Kärber, a Czech being given a seat, an act calculated to obviate Czech obstruction in the next session of parliament. Among the ministers retired was Dr. von Bohm-Bawerk, minister of finance. The new Hungarian Program was announced by Count Apponyi in a recent speech. It demands, first, a separate Hungarian

royal standard and an independent Hungarian court; second, an arrangement requiring the King and the royal heir together with the diplomatic representatives of foreign states to pass a part of each year on Hungarian soil; third, that the independent existence of Hungary be expressed in treaties with foreign states; and, fourth, that Hungarian officers be employed in the Hungarian army, that the Hungarian flag and coat of arms be introduced, that recruits be required to swear fidelity to the Hungarian constitution and that military orders be given in the Hungarian language. This last demand has been partially met by an imperial decree extending the use of the Hungarian language in the army. In the latter part of April occurred an **extensive strike** by the employees on the Hungarian government railways for the purpose of securing higher wages and better conditions of service. The government entered into negotiations with the strikers and practically conceded their demands. The strikers thereupon raised other demands. These were firmly refused and the government proceeded to adopt vigorous measures to end the strike. These were completely successful and the strike collapsed. — **Municipal elections in Vienna** occurred in August and resulted in an overwhelming victory for the anti-Semites.

MINOR EUROPEAN STATES. — In **Belgium** the chief event of political interest was the election of members of parliament in May. The results showed a gain for the opposition (Liberal) of five seats in the Chamber and two in the Senate. The main issue was the hostility of the Liberals to the growth of clerical influence, particularly in educational and political affairs. — In **Denmark** the most generally discussed question has been the proposal to incorporate a provision in the new criminal code legalizing corporal punishment for certain offenses. Laws were passed for making loans to peasants and for regulating the observance of holidays. Projects of law relating to civil marriage and for the extension of the suffrage failed of adoption. — In **Holland** parliamentary elections occurred in August and resulted in the triumph of the Conservatives, who were in the minority in the last parliament. The speech from the throne at the opening of parliament urged a new system of education, an old age insurance law and a modification of the law of limited partnerships. A government bill which proposed to grant holders of diplomas issued by private sectarian universities the same rights and privileges as are granted to graduates of state institutions was defeated in the upper chamber in consequence of the opposition of the entire Left. — **Norway and Sweden** were concerned chiefly with the problem of insuring their own neutrality in the event of the extension of the Russo-Japanese war to Europe. The Norwegian government decided to establish an important naval base on the northern coast of Norway, the site to be strongly fortified. At the opening of the Norwegian Storting in October the King announced a bill to revise the customs tariff with a view to the protection of labor. Other note-

worthy matters were the enactment by the Swedish parliament of a new homestead law which sets apart a large fund to be loaned to agricultural laborers for the purchase of lands, and the recrudescence of an old boundary dispute between the two countries which has been aggravated by a fisheries dispute. — In the politics of Portugal the chief event was the resignation, in October, of the cabinet in consequence of the refusal of the king to adjourn Parliament. — In Greece parliament was dissolved in October. — In Serbia, Peter Karageorgevitch, was solemnly crowned on September 21. — From the region of the Balkans come the usual reports of disturbances and atrocities. Ottoman troops have annihilated bands of Bulgarian insurgents and these have in turn pillaged and devastated the surrounding country. Friction developed between the Ottoman government and the governments of Austria and of Russia relative to the execution of the Austro-Russian reform scheme (see last RECORD, p. 355). The difficulty arose over the opposition of the Porte to the demand of the Austrian and Russian governments for an increase in the number of the foreign officers of the *gendarmerie*.

V. ASIA AND AFRICA.

ASIA. — In June reports of wholesale Turkish massacres of Armenians in the Sassoun district reached the outside world. It was asserted that whole villages had been destroyed and thousands of persons put to death by the Turkish soldiery. According to a statement made by M. Delcassé, June 9, in the French Chamber of Deputies, the Porte was informed that the time for repression had passed and that the French government would hold Turkey responsible for the atrocities. — In China a recrudescence of the Boxer movement occurred in the provinces of Shantung and Pechili. Many missionaries were compelled to flee for their lives. On the occasion of the seventieth birthday of the dowager empress an edict was issued pardoning, with three exceptions, all persons connected with the reform movement of 1898. In consequence of the distressed conditions prevailing in Manchuria and Kwangsi, a decree was issued commanding viceroys and other high officials to abstain from sending presents to the empress. Another decree referred to the straitened condition of the finances and ordered the abolition of various offices and posts in the provinces. Still another decree ordered an inquiry into the slipshod method of collecting the land tax. By an imperial edict of May 18 the ports of Chinanfu, Weishien and Chantsun on the Shantung peninsula were opened to the commerce of the world. In June it was announced that the government of the Chinese Empire had become a signatory to the Geneva Red Cross Convention and that the empress had subscribed 100,000 taels for the benefit of the Red Cross society. — To meet the expenses of the war with Russia the government of Japan raised two loans of \$50,000,000 each, one of

which was taken in New York and London at six per cent interest, while the other was a domestic loan bearing interest at five per cent. Late in September it was announced that a new domestic loan of \$40,000,000 at five per cent had been decided upon.

AFRICA. — An event which has caused general regret in all the British colonies of South Africa was the resignation in October of Lord Milner, high commissioner since 1897. — The Cape Colony government was defeated, May 23, on a proposition for a reduction of the estimates. Legislative measures enacted were: a bill to exclude Chinese indentured labor; an act to provide for the better administration of justice and an act to regulate the sale of firearms and ammunition. The colonial revenues for the fiscal year ending June 30 amounted to £9,910,000 and the expenditures £10,849,000. — In the Transvaal interest has been centered chiefly in the experiments with Chinese labor in the mines of the Rand. Many thousand Chinese laborers have been introduced since the enactment of the labor ordinance in January (see last RECORD, p. 367). Elaborate regulations were promulgated in April for enforcing the conditions prescribed in the labor ordinance and in the Anglo-Chinese convention regarding the introduction of coolies into the Transvaal. It has been decided (see GREAT BRITAIN) that an elective element shall be introduced into the Legislative Council of the Transvaal. — In April the British secretary of state for war announced in the House of Commons that in view of the defeat of the Mad Mullah and his flight into Italian territory the government had decided to discontinue military operations in Somaliland. Shortly thereafter it was reported that the Mad Mullah was again on the war path with 6,000 followers well supplied with ammunition and transport. — The rebellion of the Herreros in German South West Africa (see last RECORD, p. 367) continued throughout the early summer to tax the energies of the German authorities. In May Lieutenant General von Trotha was sent to take command of the German forces, amounting to some 10,000 men in the quarter, and on August 11 he broke the back of the rebellion in a day battle with 6,000 natives at Hamarkari. The Herrero leaders were killed, and thousands of their cattle were captured or dispersed. Five German officers and nineteen men were killed. — From the Congo Free State have come reports of revolting cruelties practised on the natives by white officials and others. British sentiment in particular has been aroused and the "Congo atrocities" occupied a prominent part in the debates of Parliament throughout the summer. In August it was announced that the Belgian government had appointed a commission of three judges, two Belgian and one foreign, to conduct an exhaustive investigation into the condition of affairs in the Congo State.

J. W. GARNER.

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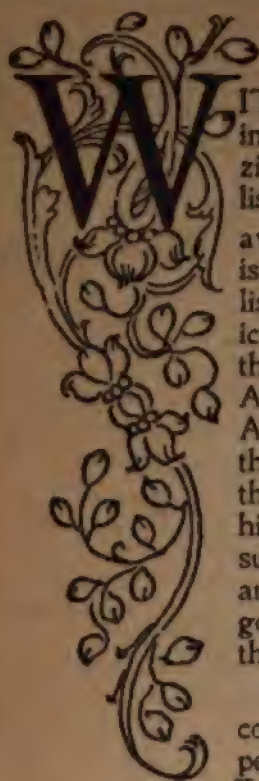
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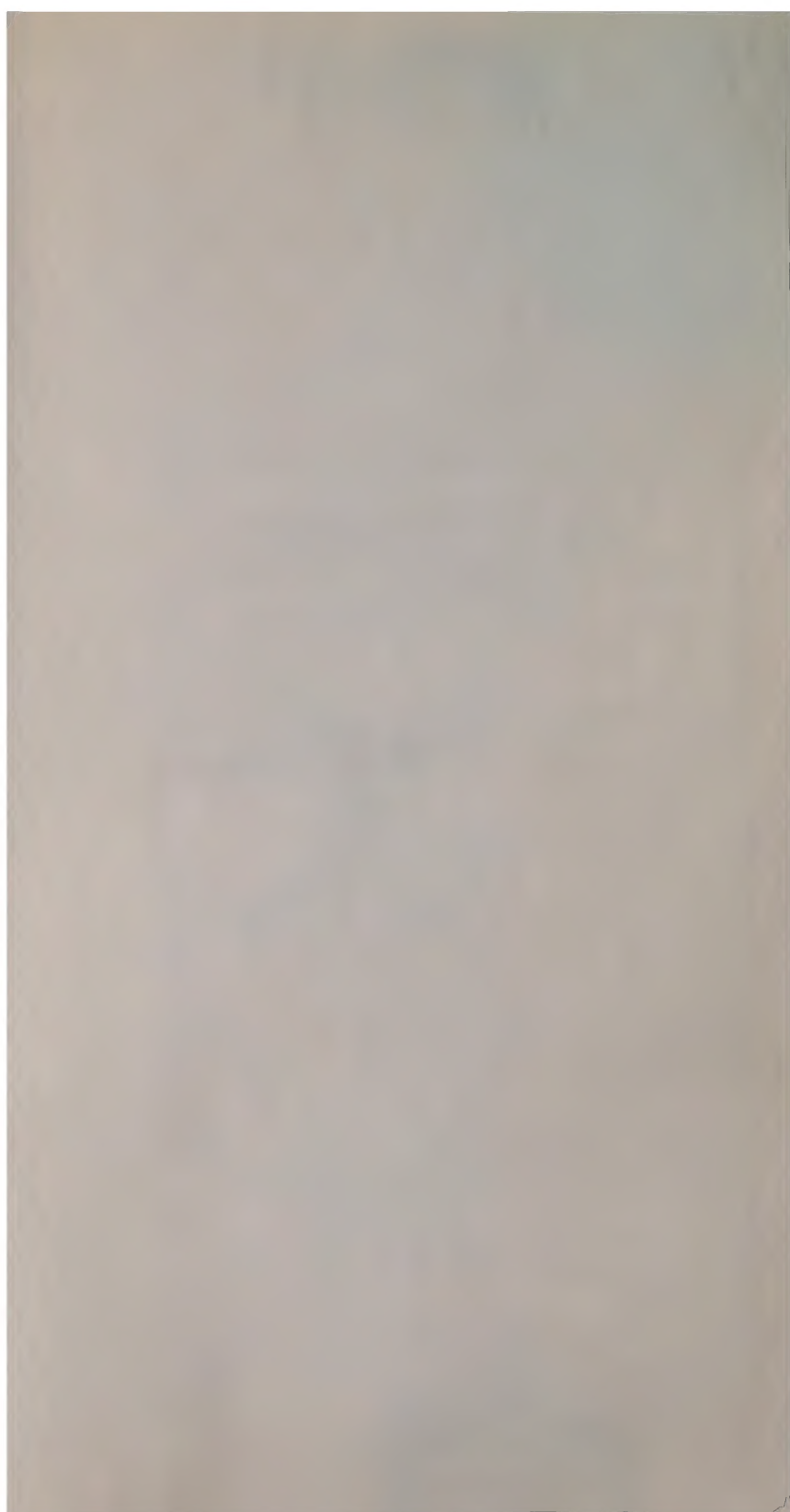
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